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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 17C 2010 Replacement TITLE 17: PROFESSIONS, OCCUPATIONS AND BUSINESSES (CHAPTERS 80-107)

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Under the Direction and Supervision of the
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Arkansas Advance Reports through 2010 Ark. LEXIS 133 (March 4, 2010) and 2010 Ark. App. LEXIS 441 (May 12, 2010).

Federal Supplement through March 5, 2010.

Federal Reporter 3d Series through April 5, 2010.

United States Supreme Court Reports through April 5, 2010.

Bankruptcy Reporter through April 12, 2010.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

A.L.R. 6th through Volume 17, p. 757.

ALR Fed. 2d through Volume 26, p. 381.

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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

TITLE 17

PROFESSIONS, OCCUPATIONS, AND BUSINESSES

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Cross References. Licensure of ambulance services, § 20-13-1001 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Lisk, A Physician's Respondeat Superior Liability for the Negligent Acts of Other Medical Professionals — When the Captain Goes Down Without the Ship, 13 U. Ark. Little Rock L.J. 183.

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GENERAL PROVISIONS

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Reporting treatment of knife and gunshot wounds required, § 12-12-602.

Effective Dates. Acts 1935, No. 148, § 5: effective on passage.

Acts 1971, No. 202, § 3: approved Mar. 2, 1971. Emergency clause provided: "It having been found and declared by the General Assembly that there is no method now provided by statute for the issuance of subpoenas by the licensing and disciplining boards of the professions of the healing arts, that the conduct of disciplinary hearings by such boards is impaired by the lack of such power, and that it is necessary for the protection of the health and safety of the people of the State of Arkansas that proper disciplinary proceedings be held, and, this act being necessary for the immediate preservation of the public peace, health and safety of the people of the State of Arkansas, an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage."

Acts 1977, No. 275, § 3: Feb. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the enforcement of the regulatory provisions of the licensing acts of the professions of the healing arts is essential to the protection of the public health, safety and welfare, and that the threat of litigation against the members of said boards has threatened the proper administration of the duties of the said boards. Therefore,

an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval."

Acts 1977, No. 767, § 5: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the public health, safety and welfare require that incompetent or disabled practitioners of the healing arts shall not be permitted to practice in the State of Arkansas and that the provisions of this act will aid and assist in protecting the people of Arkansas from injury caused by incompetent practitioners of the healing arts. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval."

Acts 1989, No. 104, § 6: Feb. 20, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the public health, safety, and welfare require that incompetent physicians and health care providers will not be permitted to practice medicine in the State of Arkansas, and that the provisions of this Act will promote professional review activity and thereby protect the people of Arkansas from incompetency in the delivery of medical care. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety shall take effect and be in force from the date of its approval."

SUBCHAPTER 1 — GENERAL PROVISIONS

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Effective Dates. Acts 1993, No. 1146, § 5: Apr. 14, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that it is necessary to provide investigative services to the Arkansas State Medical Board, Arkansas State Board of Dental Examiners, the Arkansas State Board of Nursing, the Veterinary Medical Examining Board and the Arkansas State Podiatry Examining Board so that those individual boards may carry out their statutory duty by protecting the health and welfare of the citizens of Arkansas. Therefore immediate effect should be given this measure and an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 651, § 5: Mar. 16, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that it may be necessary to carry out an execution at a date earlier than the date this act would go into effect without an emergency clause; that this act is vital in order to carry out executions as prescribed by present law; and this act should therefore go into effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1124, § 5: Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary for the admin-

istration of the boards of healing arts that individuals acting on behalf of the boards should be granted immunity from suit and judgment; and that, therefore, immediate effect should be given to this measure and an emergency is hereby declared to exist. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2005, No. 1410, § 3: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Division of Pharmacy Services and Drug Control of the Department of Health investigates licensure complaints for seven (7) professional licensing boards; that the Division of Pharmacy Services and Drug Control has a backlog of about sixty (60) open cases; that the professional work of licensees may be seriously compromised so long as the investigation remains uncompleted; and that the proposed fee increase would enable the hiring of an additional investigator to aid in completion of cases in a timely manner. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

Acts 2006 (1st Ex. Sess.), No. 4, § 11: Apr. 7, 2006. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the need to register sex offenders and update the registration files of sex offenders is necessary to ensure the safety of the citizens of the State of Arkansas; that the

provisions of this act will improve the process of registering sex offenders and updating the registration files of sex offenders; and that this act is immediately necessary because of the public risk posed by sex offenders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety

shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

17-80-101. Filing and compilation of licensing information.

(a)(1) It is the duty of the secretaries of the Arkansas State Medical Board and the Arkansas State Board of Chiropractic Examiners to file with the Secretary of State within one (1) week of the issuance of a license:

(A) The name of the person licensed;

(B) The date of license;

(C) The last known post office address of the person licensed; and

(D) Whether the license was granted:

(i) On examination before the board;

(ii) By reciprocity and, if so, the name of the state which issued the license; or

(iii) On a diploma and, if so, the name of the school or medical college which issued the diploma.

(2) This information shall be verified by the affidavits of the secretaries of the respective boards.

(b) The Secretary of State shall compile the information filed pursuant to subsection (a) of this section in a well-bound book to be kept by him or her for that purpose. He or she shall from time to time, as additional names are filed with him or her by the respective boards, record the names in the book, together with the other information furnished by the boards.

(c) The Director of the Department of Health shall report the deaths of all persons licensed by the boards named in subsection (a) of this section to the Secretary of State within a reasonable time after the information has been received in his or her office. The Secretary of State shall thereupon note after the name of the decedent the fact of his or her death and the date thereof.

(d) Any violation of the provisions of this section shall constitute a misdemeanor and be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding ten (10) days.

History. Acts 1935, No. 148, §§ 1-4; Pope's Dig., §§ 10790-10794; A.S.A. 1947, §§ 72-201 — 72-205.

Cross References. Insurance coverage, § 23-79-114.

CASE NOTES

Cited: *Heard v. Payne*, 281 Ark. 485, 665 S.W.2d 865 (1984).

17-80-102. Subpoena power of boards — Enforcement.

(a)(1) The licensing and disciplining boards of the professions of the healing arts provided in this subtitle shall have the power to issue subpoenas and bring before the board as a witness any person in this state.

(2) The secretary or the investigative officer of the board shall issue a subpoena upon the request of any party to a proceeding pending before the board or at the request of the board.

(3) The writ shall be directed to the sheriff of the county where the witness resides or may be found.

(4) The writ may require the witness to bring with him or her any book, writing, or other thing under his or her control which he or she is bound by law to produce in evidence.

(5) Service of the writ shall be in the manner as now provided by statute for the service of subpoenas in civil cases.

(b)(1) A witness who has been served by subpoena in the manner provided by law and who shall have been paid or tendered the legal fees for travel and attendance as provided by law shall be obligated to attend for examination of the trial of the cause pending before the board.

(2) In the event a witness shall have been served with subpoenas as herein provided and fails to attend the hearing in obedience to the subpoena, the board may apply to the circuit court of the county wherein the board is having its meeting for an order causing the arrest of the witness and directing that the witness be brought before the court.

(3) The court shall have the power to punish the disobedient witness for contempt as now provided by law in the trial of civil cases.

(4) The disobedient witness shall be liable in damages for nonattendance to the trial or hearing as provided by Rev. Stat., ch. 158, § 9 [superseded].

History. Acts 1971, No. 202, §§ 1, 2; A.S.A. 1947, §§ 72-141, 72-142; Acts 1993, No. 392, § 8.

A.C.R.C. Notes. The reference to "boards of the professions of the healing arts" in subdivision (a)(1) of this section may be limited to the following boards which were in existence prior to the 1971 regular session: Arkansas State Board of Chiropractic Examiners; Arkansas State Board of Dental Examiners; Arkansas Board of Hearing Aid Dispensers (now the Arkansas Board of Hearing Instrument Dispensers); Arkansas State Respiratory

Care Examining Committee; Arkansas State Board of Nursing; State Board of Optometry; Arkansas State Board of Pharmacy; State Examining Committee for Physical Therapists (which may now be the Arkansas State Board of Physical Therapy); Arkansas State Medical Board; Arkansas State Chiropody Examining Board (now the Arkansas Board of Podiatric Medicine); Arkansas Board of Examiners in Psychology; Arkansas Board of Massage (now the Arkansas State Board of Massage Therapy); and Veterinary Medical Examining Board.

Publisher's Notes. In accordance with the Per Curiam order of the Supreme Court entered on December 18, 1978, Rev. Stat., ch. 158, § 9, referred to in this section, is deemed superseded by enactment of the Arkansas Rules of Civil Procedure, Rules of Appellate Procedure, and Rules for Inferior Courts.

17-80-103. Immunity of board members.

No member of a board or any individual acting on behalf of the board of any profession or occupation classified under the laws of the State of Arkansas as a profession of the healing arts shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of the board if the board member or the individual acting on behalf of the board acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which the action is taken or the recommendation is made.

History. Acts 1977, No. 275, § 1; A.S.A. 1947, § 72-143; Acts 1995, No. 1124, § 1.

Cross References. Liability of committee members of professional societies, review organizations, and hospital medical staffs, § 17-1-102.

17-80-104. Continuing education requirements.

(a) The regulatory boards of the professions or occupations classified by the laws of the State of Arkansas as professions of the healing arts and for whom the General Assembly has heretofore established regulatory boards empowered to license persons who practice under conditions of licensure authorized by the General Assembly are authorized to adopt regulations requiring the continuing education of the persons licensed by the board.

(b) All regulations establishing requirements for continuing education under the provisions of this section shall be adopted in the manner and method set out in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for the adoption of rules and regulations.

(c) The regulatory boards shall establish by regulation the number of hours of credit and the manner and methods of obtaining the hours of credit by its licensee.

(d) In the event a licensee of the board does not complete the continuing education established by the board under the provisions of this section, the board is empowered to deny renewal of the license held by the licensee or after proper hearing take such action as it considers just and proper to compel compliance with its regulations requiring continuing education.

History. Acts 1977, No. 767, §§ 1-3; A.S.A. 1947, §§ 6-1401—6-1403.

17-80-105. Professional review under federal act.

(a) The State of Arkansas hereby elects the early options in the provision provided in the Health Care Quality Improvement Act of 1986, for all health care entities subject to that act.

(b) This section and powers granted shall be liberally and broadly construed so as to effectuate the legislative intent.

History. Acts 1989, No. 104, § 1, 3.

section, is codified as 42 U.S.C. § 11101 et

U.S. Code. The Health Quality Improvement Act of 1986, referred to in this

seq.

17-80-106. Investigations and inspections of alleged wrongdoing.

(a) The Arkansas State Medical Board, the Arkansas State Board of Dental Examiners, the Arkansas State Board of Nursing, the Veterinary Medical Examining Board, the Arkansas Board of Podiatric Medicine, the State Board of Optometry, and the Arkansas State Board of Physical Therapy are authorized to utilize as their employees, as the investigators for the purposes described in this section, the investigators and inspectors of the Division of Pharmacy Services and Drug Control of the Department of Health.

(b) The Department of Health is directed to make investigators and inspectors of the department available for those purposes and for as long as they may conduct investigations and inspections of alleged wrongdoing of those individuals licensed or permitted by the Arkansas State Medical Board, the Arkansas State Board of Dental Examiners, the Arkansas State Board of Nursing, the Veterinary Medical Examining Board, the Arkansas Board of Podiatric Medicine, the State Board of Optometry, and the Arkansas State Board of Physical Therapy.

(c) Upon written request of a person authorized by the respective licensing board and with authorization by the Director of the Division of Pharmacy Services and Drug Control of the Department of Health pursuant to appropriate authority from the board, the investigators may investigate, inspect, and make copies of medical records, dental records, nursing records, drug orders, prescriptions, veterinary records, and podiatry records, wherever located, of all persons licensed by the medical, optometric, dental, nursing, veterinary, podiatric, and physical therapy boards in order for the respective licensing board to determine whether or not any persons have:

(1) Violated the laws of the State of Arkansas or of the United States respecting the prescribing, administering, and use of narcotics and potentially dangerous drugs;

(2) Practiced their profession in such a way as to endanger the general health and welfare of the public; or

(3) Otherwise violated the practice act or rules and regulations of that respective board.

(d) Copies of records, prescriptions, or orders shall not become public records by reason of their use in disciplinary proceedings held by the

licensing board, nor shall the patients' or licensed medical professionals' property rights to the prescriptions, orders, or records be extinguished by that use.

(e)(1) The investigators may obtain copies of prescriptions, orders, and records as admissible evidence without the necessity of the issuance of an administrative inspection warrant or search warrant as authorized by § 5-64-502.

(2) However, investigators must have in their possession an authorization by the Division of Pharmacy Services and Drug Control of the Department of Health.

(3) The licensee may refuse the request of the investigator and not tender copies of the records.

(4)(A) If prescriptions, orders, or records are to be used in criminal proceedings, they shall be obtained by investigators only on an administrative inspection warrant.

(B) No inspection warrant is necessary when prescriptions, orders, or records are to be used solely for board disciplinary purposes.

(f) In lieu of a letter of authority, each of the boards will have the power to issue to the investigators a subpoena to obtain copies of the records referred to in this section, and the investigators will have the authority to serve the subpoena and collect the records.

(g) In the event that a witness served with a subpoena fails to honor the subpoena, the particular board issuing the subpoena may apply to the circuit court for remedies as provided in the Arkansas Rules of Civil Procedure. The court shall have the power to punish the disobedient witness for contempt as is now provided by law in the trial of civil cases.

(h)(1) The Division of Pharmacy Services and Drug Control of the Department of Health shall have the authority to collect from the individual board utilizing the services delineated in this section up to fifty dollars (\$50.00) per hour with a maximum of four thousand dollars (\$4,000) in hourly costs per case.

(2) The Division of Pharmacy Services and Drug Control of the Department of Health shall also have the authority to collect from the individual board utilizing the services delineated in this section for:

(A) Travel expenses at the level for state employees; and

(B) Other out-of-pocket costs incurred by the Division of Pharmacy Services and Drug Control of the Department of Health in carrying out its investigative task.

(i) The Arkansas State Medical Board, the Arkansas State Board of Dental Examiners, the Arkansas State Board of Nursing, the Veterinary Medical Examining Board, the Arkansas Board of Podiatric Medicine, the State Board of Optometry, and the Arkansas State Board of Physical Therapy are authorized to collect costs incurred under subsection (h) of this section from the licensees being investigated by the Division of Pharmacy Services and Drug Control of the Department of Health.

(j) All funds collected under subsection (h) of this section are declared to be special revenues and shall be deposited into the State

Treasury and credited to the Public Health Fund to be used exclusively by the Division of Pharmacy Services and Drug Control of the Department of Health for investigations conducted under this section.

(k) Subject to rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds collected under this section as certified by the Chief Fiscal Officer of the State to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1993, No. 1146, § 1; 1997, No. 493, § 1; 2001, No. 455, § 1; 2003, No. 1076, § 1; 2005, No. 1410, § 1.

A.C.R.C. Notes. Acts 2001, No. 455, § 1, was not properly engrossed. Specifically, the word “optometric” and the comma immediately following it were added to (c) without being so indicated on the act.

17-80-107. “Physician” defined.

For the purposes of the “Good Samaritan” law, § 17-95-101, and any other law of this state which takes effect on or after January 1, 1994, the term “physician” shall mean a person licensed by the Arkansas State Medical Board, the Arkansas State Board of Chiropractic Examiners, or the Arkansas Board of Podiatric Medicine.

History. Acts 1993, No. 1190, § 1.

§ 17-81-101 et seq.

Publisher’s Notes. Acts 1993, No. 1190, § -1, is also codified as § 17-95-101(d).

Physicians and Surgeons, § 17-95-101 et seq.

Podiatrists, § 17-96-101 et seq.

Cross References. Chiropractors,

17-80-108. Disciplinary or corrective measures.

(a) Any assistance rendered with any execution carried out pursuant to § 5-4-617 by any licensed health care professional, including, but not limited to, physicians, nurses, and pharmacists, shall not be cause for any disciplinary or corrective measures by any board or commission created by the state or governed by state law which oversees or regulates the practice of health care professionals, including, but not limited to, the Arkansas State Medical Board, the Arkansas State Board of Nursing, and the Arkansas State Board of Pharmacy.

(b) The infliction of the punishment of death by administration of the required lethal substances in the manner required by § 5-4-617 shall not be construed to be the practice of medicine.

History. Acts 1995, No. 651, § 1.

17-80-109. Definitions — Acts 1999, No. 338.

As used in this act:

(1) “Healing arts” means the practice of any type of profession requiring special education and skill that promotes healing of the human body or that relates to the prevention of illness or disease; and

(2) “Health care service” means that service offered or provided relating to the prevention, cure, or treatment of illness, injury, or disease and includes services performed by healing arts practitioners.

History. Acts 1999, No. 338, § 1. 338, codified as §§ 17-80-109 — 17-80-113.
Meaning of “this act”. Acts 1999, No. 113.

17-80-110. Using “Doctor” as title in documentation.

In any written document or electronically transmitted document in connection with the provision of a health care service, no person shall use the title “Doctor”, unless that title is authorized under § 17-1-101 et seq., in which case that person shall use the title in accordance with the statutes and regulations governing the particular health care profession or unless that person has been granted a doctoral degree in any healing arts profession and is licensed in that profession under § 17-1-101 et seq.

History. Acts 1999, No. 338, § 2.

17-80-111. Restrictions on “Doctor” as title in advertising.

No person shall advertise or allow oneself to be advertised by the title “Doctor” in association with the practice of one (1) of the healing arts, except in the practice of one (1) of the health care professions regulated under § 17-1-101 et seq., in which case that person shall use the title in accordance with the statutes and regulations governing the particular health care profession or unless that person has been granted a doctoral degree in any healing arts profession and is licensed in that profession under § 17-1-101 et seq.

History. Acts 1999, No. 338, § 3.

17-80-112. Use of “Doctor” as title in provision of health care services.

In connection with the provision of health care services, no person shall call oneself or allow oneself to be called by the title “Doctor”, except in the practice of one (1) of the health care professions regulated under § 17-1-101 et seq., in which case the person shall use the title in accordance with the statutes and regulations governing the particular health care profession.

History. Acts 1999, No. 338, § 4.

17-80-113. Authorized use of “Doctor” as title.

This act shall not be construed to authorize any person to use the title “Doctor”, unless that title is authorized under § 17-1-101 et seq., in which case that person shall use the title in accordance with the statutes and regulations governing the particular health care profes-

sion or unless that person has been granted a doctoral degree in any healing arts profession and is licensed in that profession under § 17-1-101 et seq.

History. Acts 1999, No. 338, § 5.

338, codified as §§ 17-80-109 — 17-80-

Meaning of “this act”. Acts 1999, No. 113.

17-80-114. Scope of practice — Complaints.

(a) As used in this section, “healing arts” means the practice of any type of profession requiring special education and skill that promotes healing of the human body or that relates to the prevention of illness or disease.

(b) No board of the healing arts may take disciplinary action at the board level against a licensee of another board of the healing arts except as provided in subsections (c) and (d) of this section.

(c)(1) If a licensee or a member of a board of the healing arts believes that a licensee of another board of the healing arts is practicing outside that licensee’s proper scope of practice, the licensee or member may file a complaint with his or her own board but may not file the complaint with any other board of the healing arts.

(2) A board of the healing arts that receives a complaint regarding the proper scope of practice of a licensee of another board of the healing arts may file the complaint with that other board.

(3) A board of the healing arts receiving a complaint from another board of the healing arts shall:

(A) Investigate the complaint;

(B) Take whatever action that board considers appropriate pursuant to its practice act and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to determine whether the licensee was practicing outside the licensee’s proper scope of practice; and

(C) Communicate the final disposition of the complaint to:

(i) The licensee who is the subject of the complaint; and

(ii) The board of the healing arts that filed the complaint.

(d)(1) With respect to the scope of practice issue, in any subsequent proceeding before the board of the healing arts that filed the complaint and in any subsequent judicial proceeding, the determination of the board of the healing arts that received the complaint shall be dispositive unless the findings, inferences, conclusions, or decisions of the board of the healing arts that received the complaint are:

(A) In violation of constitutional or statutory provisions;

(B) In excess of the board’s statutory authority;

(C) Made upon unlawful procedure;

(D) Affected by other error or law;

(E) Not supported by substantial evidence of record; or

(F) Arbitrary, capricious, or characterized by abuse of discretion.

(2) This subsection (d) applies to judicial review under § 25-15-212 of action taken by the board of the healing arts that filed the complaint.

History. Acts 2003, No. 341, § 1; 2007, No. 72, § 1.

Amendments. The 2007 amendment inserted “subsections (c) and (d) of” in (b); inserted “the proper scope of practice of” in (c)(2); inserted “of the healing arts” in

(c)(2), the introductory language of (c)(3) and in (c)(3)(C)(ii); inserted “to determine whether the licensee was practicing outside the licensee’s proper scope of practice” in (c)(3)(B); deleted (c)(4); and added (d).

17-80-115. Jewelry eye implants.

(a) Except as provided in subsection (b) of this section, no person shall implant jewelry into the mucous membrane of the eye of another person.

(b) The Arkansas State Medical Board may authorize and regulate the practice of implanting jewelry into the mucous membrane of an eye.

History. Acts 2005, No. 1688, § 2.

A.C.R.C. Notes. Acts 2005, No. 1688, § 1, provided: “Title. This act shall be

known and may be cited as the ‘Eye Protection Act Of 2005’.”

17-80-116. Criminal background checks.

(a) Any healthcare professional with prescriptive authority may request information on a person through the Arkansas Crime Information Center prior to writing or issuing a prescription to the person for a drug to treat erectile dysfunction.

(b)(1) A healthcare professional is not liable for negligence for failing to request information under subsection (a) of this section prior to writing or issuing a prescription to a person for a drug to treat erectile dysfunction.

(2) Evidence of the failure of a healthcare professional to request information under subsection (a) of this section is not admissible as evidence of negligence in any court or administrative proceeding.

History. Acts 2006 (1st Ex. Sess.), No. 4, § 9.

SUBCHAPTER 2 — IMPAIRED PHYSICIAN AND DENTIST TREATMENT ACT

SECTION.	SECTION.
17-80-201. Short title.	17-80-207. Request for restricted license.
17-80-202. Purpose.	17-80-208. Confidentiality of records.
17-80-203. Definitions.	17-80-209. Participation in treatment program.
17-80-204. Authority.	17-80-210. Limitation on liability.
17-80-205. Procedures.	
17-80-206. Evaluations.	

Effective Dates. Acts 1993, No. 1220, § 14: Apr. 19, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that there is a need for the identification and treatment of physicians and dentists licensed

under the Arkansas Medical Practices Act who suffer from impairment in order to promote the public health and safety and to ensure the continued availability of the skills of highly trained medical and dental professionals for the benefit of the public.

Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the

public peace, health and safety shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

ALR. Tort liability of medical society or professional association for failure to discipline or investigate negligent or other-

wise incompetent medical practitioner. 72 A.L.R.4th 1148.

17-80-201. Short title.

This subchapter shall be known as the “Impaired Physician and Dentist Treatment Act”.

History. Acts 1993, No. 1220, § 1.

17-80-202. Purpose.

The purpose of this subchapter is to provide for the identification and treatment of physicians and dentists licensed under the Arkansas Medical Practices Act, § 17-95-201 et. seq., § 17-95-301 et. seq., and § 17-95-401 et. seq., who suffer from impairment, in order to promote the public health and safety and to ensure the continued availability of the skills of highly trained medical and dental professionals for the benefit of the public.

History. Acts 1993, No. 1220, § 2.

17-80-203. Definitions.

For purposes of this subchapter:

(1) “Board” means the Arkansas State Medical Board with reference to physicians and the Arkansas State Board of Dental Examiners with reference to dentists;

(2) “Dentists’ health committee” means a dentist committee of the Arkansas State Dental Association composed of dentists who have expertise in the area of alcoholism, drug abuse, or mental illness, and that has been designated by the Arkansas State Dental Association to perform any and all of the activities set forth in subdivision (4) of this section;

(3) “Impaired” or “impairment” means the presence of the diseases of alcoholism, drug abuse, or mental illness;

(4) “Impaired dentist program” means the Arkansas State Dental Association-sponsored program for the detection, intervention, and monitoring of impaired dentists;

(5) “Impaired physician program” means the Arkansas Medical Society-sponsored program for the detection, intervention, and monitoring of impaired physicians;

(6) "Physicians' health committee" means a physician committee of the Arkansas Medical Society composed of physicians who have expertise in the area of alcoholism, drug abuse, or mental illness, and that has been designated by the Arkansas Medical Society to perform any and all activities set forth in subdivision (3) of this section;

(7)(A) "Professional incompetence" means the inability or failure of a physician or dentist to practice his or her respective professions with reasonable skill and safety.

(B) Impairment in and of itself shall not give rise to a presumption of professional incompetence; and

(8) "Treatment program" means a plan of care and rehabilitation services provided by those organizations and persons authorized to provide such services for impaired physicians and dentists taking part in the programs provided under this subchapter.

History. Acts 1993, No. 1220, § 3.

17-80-204. Authority.

The Arkansas Medical Society shall have the authority to establish a physicians' health committee and the Arkansas State Dental Association shall have the authority to establish a dentists' health committee to undertake the functions and responsibilities to carry out the purposes of this subchapter and may include any of the following:

- (1) Contracting with providers of treatment programs;
- (2) Receiving and evaluating reports of suspected impairment from any source;
- (3) Intervening in cases of verified impairment;
- (4) Referring impaired physicians or dentists to treatment programs;
- (5) Monitoring the treatment and rehabilitation of impaired physicians or dentists;
- (6) Providing posttreatment monitoring and support of rehabilitated impaired physicians and dentists; and
- (7) Performing such other activities as the committees deem necessary to accomplish the purposes of this subchapter.

History. Acts 1993, No. 1220, § 4.

17-80-205. Procedures.

The physicians' health committee and the dentists' health committee shall develop procedures for:

- (1) Immediate reporting to the appropriate board of the names and results of any contact or investigation regarding any impaired physician or impaired dentist who is believed to constitute an imminent danger to the public or to himself or herself;
- (2) Reporting to the appropriate board in a timely fashion any impaired physician or any impaired dentist who refuses to cooperate with the respective committee, refuses to submit to treatment, or whose impairment is not substantially alleviated through treatment, and who,

in the opinion of the respective committee, exhibits professional incompetence; and

(3) Informing each participant of the impaired physician program or the impaired dentist program of the program procedures, responsibilities of program participants, and the possible consequences of noncompliance with the program.

History. Acts 1993, No. 1220, § 5.

17-80-206. Evaluations.

(a) If the Arkansas State Medical Board has reason to believe that a physician is impaired or if the Arkansas State Board of Dental Examiners has reason to believe that a dentist is impaired, either board may cause an evaluation of the physician or dentist to be conducted by the appropriate committee for the purpose of determining if there is an impairment.

(b) The physicians' health committee or the dentists' health committee shall report the findings of its evaluation to its respective board.

History. Acts 1993, No. 1220, § 6.

17-80-207. Request for restricted license.

(a)(1) An impaired physician or an impaired dentist may request in writing to the appropriate board for a restriction of his or her license to practice.

(2) The board may grant such a request for restriction and shall have authority to attach conditions to the licensure of the physician to practice medicine or the dentist to practice dentistry within specified limitations.

(b) Removal of a voluntary restriction on licensure to practice medicine or dentistry shall be subject to the procedure for reinstatement of licensure pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., or the Arkansas Dental Practice Act, § 17-82-101 et seq.

History. Acts 1993, No. 1220, § 7.

17-80-208. Confidentiality of records.

(a)(1) Notwithstanding any provision of state law, records of the physicians' health committee pertaining to an impaired physician and all records of the dentists' health committee pertaining to an impaired dentist shall be kept confidential and are not subject to discovery or subpoena.

(2) No person in attendance at any meeting of the physicians' health committee or the dentists' health committee shall be required to testify as to any committee discussions or proceedings.

(b) However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery

or use in any such action merely because they were presented during the proceedings of the committee, nor shall any person who testifies before the committee or who is a member of the committee be prevented from testifying as to matters within his or her knowledge, but the witness shall not be asked about his or her testimony before the committee or about opinions formed by him or her as a result of the committee hearings.

History. Acts 1993, No. 1220, § 8.

17-80-209. Participation in treatment program.

An impaired physician who is participating in or has successfully completed a treatment program pursuant to this subchapter shall not be excluded from any hospital staff solely because of such participation.

History. Acts 1993, No. 1220, § 9.

17-80-210. Limitation on liability.

(a) Notwithstanding any other provisions of law, the Arkansas Medical Society, the Arkansas Osteopathic Medical Association, the physicians' health committee and members thereof, the Arkansas State Dental Association, and the dentists' health committee and members thereof shall not be held liable in damages to any person for any acts, omissions, or recommendations made by them in good faith while acting within the scope of their responsibilities pursuant to this subchapter.

(b) No person who in good faith and without malice makes a report to the physicians' health committee or to the dentists' health committee shall be liable for damages to any person.

History. Acts 1993, No. 1220, § 10;
2001, No. 929, § 1.

SUBCHAPTER 3 — DIVERSITY IN LICENSED HEALTH PROFESSIONS

SECTION.

17-80-301. Purposes.

17-80-302. Minority members of state

health-related agencies,
boards, and commissions.

17-80-301. Purposes.

The purposes of this subchapter are to:

(1) Provide appointment recommendations for Arkansas state boards and commissions that license or otherwise regulate health-related professions to ensure board and commission compositions that reflect the diversity of the State of Arkansas; and

(2) Ensure that cultural competency, health disparities, and other minority health issues are adequately represented in the health policy

decisions determined by state health-related agencies, boards, and commissions for the State of Arkansas.

History. Acts 2009, No. 1490, § 1.

17-80-302. Minority members of state health-related agencies, boards, and commissions.

(a) The appointing authorities for state health-related agencies, boards, and commissions shall consider appointment recommendations submitted by minority health-related professional associations.

(b) The recommending organizations under this section include without limitation:

- (1) The Arkansas Medical, Dental, and Pharmaceutical Association;
- (2) The Arkansas Metro Association of Black Social Workers;
- (3) The Arkansas Black Nurses Association;
- (4) The National Association of Hispanic Nurses, Arkansas Chapter;
- (5) The National Pharmacists Association of Arkansas; and
- (6) The Arkansas State Board of Nursing.

(c) Recommendations for appointments under this section shall:

(1) Be submitted to the appointing authorities at least thirty (30) days before the expiration of a position in a state health-related agency, board, or commission relevant to the field or practice of the recommending body;

(2) Be submitted to the appointing authorities anytime before the appointing authority fills a position that has opened due to resignation or removal before the end of the originally appointed term;

(3) Be submitted by an officially designated officer or committee on behalf of the recommending organization; and

(4) Include correspondence on official organizational letterhead and the resume or curriculum vitae of a recommended candidate.

(d) If a recommendation for appointment under subsection (b) of this section is not received within the time allotted for the appointment, the appointing authority may make the appointment without a recommendation.

(e) The health-related agencies, boards, and commissions for which recommendations may be considered under this section include the:

- (1) Arkansas Board of Podiatric Medicine;
- (2) Arkansas Psychology Board;
- (3) Arkansas Social Work Licensing Board;
- (4) Arkansas State Board of Dental Examiners;
- (5) Arkansas State Medical Board;
- (6) Arkansas State Board of Pharmacy;
- (7) Board of Examiners in Speech-Language Pathology and Audiology; and
- (8) State Board of Optometry.

(f) This section does not change or affect any existing delineations for minority appointments.

History. Acts 2009, No. 1490, § 1.

CHAPTER 81

CHIROPRACTORS

SUBCHAPTER

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF CHIROPRACTIC EXAMINERS.
3. LICENSING.

RESEARCH REFERENCES

ALR. Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs. 8 A.L.R.4th 1056.

Scope of practice of chiropractic. 16 A.L.R.4th 58.

Physician's or other healer's conduct, or conviction of offense not directly related to medical practice, as ground for disciplinary action. 34 A.L.R.4th 609.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Improper or immoral sexually related conduct toward patient as grounds for disciplinary action against physician, dentist or other licensed healer. 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Necessity of expert evidence in proceeding for revocation of license of physician,

surgeon, or dentist. 74 A.L.R.4th 969.

Liability of chiropractors and other drugless practitioners for medical malpractice. 77 A.L.R.4th 273.

Rights as to notice and hearing in preceding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.

Medical malpractice: Who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice. 12 A.L.R.5th 1.

Sufficiency of evidence to prove future medical expenses as result of injury to back, neck, or spine. 26 A.L.R.5th 401.

Exclusion of, or discrimination against, physician or surgeon by hospital. 28 A.L.R.5th 107.

Allowance of punitive damages in medical malpractice actions. 35 A.L.R.5th 145.

Chiropractor's liability for failure to refer patient to medical practitioner. 58 A.L.R.5th 590.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., § 5 and § 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-81-101. Short title.
- 17-81-102. Definitions.
- 17-81-103. Effect on existing licenses.
- 17-81-104. False advertising.

SECTION.

- 17-81-105. Prosecution of violations.
- 17-81-106. Health and police regulations applicable.

Effective Dates. Acts 1981, No. 568, § 3: Mar. 18, 1981. Emergency clause pro-

vided: "It is hereby found and determined by the General Assembly that the present

law pertaining to deceptive advertising by physicians is inadequate and that this act is designed to strengthen such law and is therefore immediately necessary to protect the welfare of the citizens of this state. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 148, § 3: Feb. 11, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is immediately necessary to define the terms ‘chiropractic aide’ and ‘spinal manipulation’ for purposes of the Arkansas Chiropractic Practices Act; that this act accomplishes such purposes; and that confusion will exist concerning the application of the Chiropractic Practices Act until this act becomes effective. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full

force and effect from and after its passage and approval.”

Acts 1999, No. 1553 § 23: Apr. 15, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that regular examinations for licensure under the Arkansas Chiropractic Practices Act are held in January and July; that brochures containing Arkansas law must be prepared for applicants; that for the effective administration of the Arkansas Chiropractic Practices Act, this act should become effective immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-81-101. Short title.

This chapter shall be known as the “Arkansas Chiropractic Practices Act”.

History. Acts 1971, No. 706, § 1; A.S.A. 1947, § 72-415.

CASE NOTES

Cited: Teston v. Ark. State Bd. of Chiropractic Examiners, 361 Ark. 300, 206 S.W.3d 796 (2005).

17-81-102. Definitions.

As used in this chapter:

(1) “Analysis” includes physical examination, the use of X-ray and other analytical instruments, and procedures generally used in the practice of chiropractic;

(2) “Board” means the Arkansas State Board of Chiropractic Examiners;

(3) “Chiropractic” means that science and art which utilizes the inherent recuperative powers of the body and deals with the relationship between the nervous system and the spinal column, including its

immediate articulations, and the role of its relationship in the restoration and maintenance of health;

(4) “Chiropractic aide” means an unlicensed member of the chiropractic team who may assist a chiropractic physician in the performance of those procedures and techniques constituting the practice of chiropractic as defined in this chapter with the exception of spinal manipulation and adjustment, provided that such assistance shall be performed under the direct supervision of a licensed chiropractic physician;

(5) “Physician” means a person authorized or licensed to practice medicine pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., a person authorized or licensed to practice chiropractic pursuant to the provisions of this chapter, and a person authorized to practice osteopathy pursuant to § 17-91-101 et seq.;

(6)(A) “Practice of chiropractic” means the engagement in the diagnosis and analysis of any interference with normal nerve transmission and expression, and the procedure preparatory to and complementary to the correction thereof by an adjustment of the articulations of the vertebral column, its immediate articulations, including spinal adjustments, spinal manipulations, and spinal mobilizations, such as any type of pressure, force, thrust, or passive movement, singular or plural, applied to the spinal vertebrae or their adjacent articulations by hand or mechanical device or by other incidental adjustments, for the restoration and maintenance of health. The practice of chiropractic includes therapy, the normal regimen, and rehabilitation of the patient for the purpose of removing any injury, deformity, or abnormality of human beings without the use of drugs or surgery.

(B) The practice of chiropractic, as authorized under the provisions of this chapter, shall not include the performance of the duties of a midwife or obstetrician, therapy by the use of ionizing radiation, incisive surgery, prescribing for or administering to any person any drug to be taken internally, or puncturing the skin for the purpose of introducing any substance into the body. Nothing herein shall prevent puncturing the skin for routine blood analysis, including red blood count, white blood count, differential and serology, in the practice of chiropractic for diagnostic purposes; and

(7) “Spinal manipulation” and “adjustment” mean the skillful or dexterous treatment whereby a corrective force or passive movement of the joint is made to realign vertebrae or articulations to their normal juxtaposition.

History. Acts 1971, No. 706, §§ 3, 17; 417, 72-431, 72-434; Acts 1987, No. 354, 1975, No. 612, § 1; 1981, No. 568, § 1; § 1; 1999, No. 1553, § 1. 1983, No. 148, § 1; A.S.A. 1947, §§ 72-

CASE NOTES

ANALYSIS

Expert Witness.

Illegal Practice of Chiropractic.

Illegal Practice of Medicine.

Expert Witness.

A chiropractor is competent to testify in a personal injury action, as an expert medical witness, concerning matters within the scope of the profession and the practice of chiropractic. *Hardy v. Bates*, 291 Ark. 606, 727 S.W.2d 373 (1987).

In a slip and fall case, pursuant to Fed. R. Evid. 702, the trial court did not abuse its discretion in admitting the chiropractor's opinion regarding causation as reliable because: (1) he based his opinion on his education, training, and proper chiropractic methodology and reasoning in treating the injured party and forming an expert opinion; (2) he relied on accepted chiropractic tests and took a thorough patient history from the injured party; (3) he did not base his conclusions solely on the injured party's statements, but, instead, used his many years of experience and training to treat her condition and provide treatment; (4) he did not deviate in any way from his normal practice of

conducting chiropractic examinations; and (5) he qualified as an expert in chiropractic treatment under subdivision (6) of this section. *Kudabeck v. Kroger Co.*, 338 F.3d 856 (8th Cir. 2003).

Illegal Practice of Chiropractic.

Evidence supported the Arkansas State Board of Chiropractic Examiners' finding that physical therapist's treatments, which caused his patients' spines to "pop," were "spinal manipulations" as defined in subdivision (7) of this section and could only be performed by licensed chiropractors. *Teston v. Ark. State Bd. of Chiropractic Examiners*, 361 Ark. 300, 206 S.W.3d 796 (2005), cert. denied, *Teston v. Ark. State Bd. of Chiropractic Exam'rs*, 546 U.S. 960, 126 S. Ct. 480, 163 L. Ed. 2d 363 (2005).

Illegal Practice of Medicine.

Chiropractors who indicated that they could perform numerous treatments and diagnostic functions in addition to various therapies were engaged in the illegal practice of medicine. *Kuhl v. Arkansas State Bd. of Chiropractic Exmrs.*, 236 Ark. 58, 364 S.W.2d 790 (1963) (decision under prior law).

17-81-103. Effect on existing licenses.

Nothing in this chapter shall be construed to invalidate or affect the license of any person holding a valid unrevoked or unsuspended license to practice chiropractic in this state on July 19, 1971. Persons holding valid licenses shall be subject to all provisions of this chapter except as provided in this chapter.

History. Acts 1971, No. 706, § 15; A.S.A. 1947, § 72-429.

17-81-104. False advertising.

No person defined in § 17-81-102(5) as a physician may solicit for patronage or advertise for patronage by any means whatever which is misleading, fraudulent, deceptive, or dishonest.

History. Acts 1971, No. 706, § 20; 1981, No. 568, § 1; A.S.A. 1947, § 72-434.

Cross References. False, deceptive,

or misleading advertising as "unprofessional conduct," § 17-95-409.

17-81-105. Prosecution of violations.

It shall be the duty of the several prosecuting attorneys of the State of Arkansas to prosecute to final judgment every criminal violation of this chapter committed within their jurisdictions when requested and authorized by the Arkansas State Board of Chiropractic Examiners.

History. Acts 1971, No. 706, § 23;
A.S.A. 1947, § 72-437.

17-81-106. Health and police regulations applicable.

Chiropractic practitioners licensed under this chapter shall be bound by all applicable health and police regulations of the state. They shall be qualified to sign death certificates, insurance certificates, and all other certificates pertaining to public health with like effect as other licensed physicians.

History. Acts 1971, No. 706, § 19;
A.S.A. 1947, § 72-433.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF CHIROPRACTIC EXAMINERS

SECTION.

- 17-81-201. Creation — Members — Appointment.
- 17-81-202. Members — Qualifications.
- 17-81-203. Members — Liability.
- 17-81-204. Organization — Meetings.

SECTION.

- 17-81-205. Minutes — Records.
- 17-81-206. Duties and powers.
- 17-81-207. Executive director.
- 17-81-208. Disposition of funds.

Cross References. Board members not to be held personally liable for actions as board members, § 17-80-103.

Effective Dates. Acts 1975 (Extended Sess., 1976), No. 1080, § 2: Jan. 30, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Board of Chiropractic Examiners which once consisted of three members has been increased to five members pursuant to the authority granted in Acts 1973, No. 578 but that, under the existing law, members of the board are still selected for terms of three years; that since the members have heretofore been selected for terms of three years, the terms of three members of the board expire in one year; that the expiration of the terms of three members of the five-member board in one year has a disrupting effect on the operation of the board; that this act is designed to provide a procedure for the staggering of the terms of members of said board in order

that the term of only one member of the board will expire each year; that this act should be given effect at the earliest possible date to accomplish this worthy purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 760, § 3: Apr. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the qualifications currently prescribed by law for members of the State Board of Chiropractic Examiners are unduly restrictive in that it provides that no two members of the board shall be graduates of the same school or college of chiropractic; that this unnecessary restriction makes it impossible for some of the most qualified chiropractors in the state to serve on the board; that this act is designed to alleviate this situation by per-

mitting no more than two members of the board to be graduates of the same school and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 761, § 3: Apr. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to the selection of members of the State Board of Chiropractic Examiners is not clear with respect to the appointment of such members and that this act is designed to clarify such law and to thereby facilitate the practice of chiropractic in the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 51, § 6: Feb. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that various sections of the Chiropractic Practices Act are in need of immediate revision and that this act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 869, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1080 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the

period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1553, § 23: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that regular examinations for licensure under the Arkansas Chiropractic Practices Act are held in January and July; that brochures containing Arkansas law must be prepared for applicants; that for the effective administration of the Arkansas Chi-

ropractic Practices Act, this act should become effective immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-81-201. Creation — Members — Appointment.

(a) The Arkansas State Board of Chiropractic Examiners is established.

(b)(1) The board shall be composed of seven (7) members appointed by the Governor for terms of five (5) years.

(2) Five (5) members shall be qualified chiropractors. At least thirty (30) days prior to the expiration of the term of office of each professional member, the various chartered chiropractic state organizations may submit to the Governor a list of three (3) names of qualified chiropractors for each position for which a term expires. On or before June 30 of each year, the Governor may appoint from the list a person to fill each position for which the term of office expires.

(3) Two (2) members of the board shall not be actively engaged in or retired from the profession of chiropractic. One (1) shall represent consumers, and one (1) shall be sixty (60) years of age or older and shall be the representative of the elderly. Both shall be appointed from the state at large subject to confirmation by the Senate. The two (2) positions may not be held by the same person. Both shall be full voting members but shall not participate in the grading of examinations.

(c) When a vacancy occurs on the board for any reason, the vacancy may be filled by appointment by the Governor for the unexpired term. Vacancies of professional members may be filled from a list of three (3) names of qualified chiropractors submitted by the various chartered chiropractic state organizations.

History. Acts 1971, No. 706, § 4; 1975 (Extended Sess., 1976), No. 1080, § 1; 1977, No. 113, §§ 1-3; 1979, No. 761, § 1; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-418; reen. Acts 1987, No. 869, § 1; 1999, No. 1553, § 2.

A.C.R.C. Notes. Part of this section

was reenacted by Acts 1987, No. 869, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. The terms of the members of the Arkansas State Board of

Chiropractic Examiners, other than the representatives of consumers and the elderly, are arranged so that one term expires every year.

Acts 1981, No. 717, § 1, provided that

the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

17-81-202. Members — Qualifications.

(a) Each member of the Arkansas State Board of Chiropractic Examiners shall be a citizen of the United States, a resident of this state, and shall, before entering upon the duties of the office, take the oath prescribed by the Arkansas Constitution for state officers and shall file it with the Secretary of State who shall thereupon issue to each person so appointed a certificate of appointment.

(b) Each professional member shall possess the following additional qualifications:

(1) The member must be a graduate of a reputable school or college of chiropractic. However, no more than two (2) members of the board shall be graduates of the same school or college of chiropractic; and

(2) The member must have been a regularly licensed and practicing chiropractor in Arkansas for a period of five (5) years next preceding the date of his or her appointment.

History. Acts 1971, No. 706, § 5; 1979, No. 760, § 1; 1981, No. 51, § 1; A.S.A. 1947, § 72-419.

17-81-203. Members — Liability.

No member of the Arkansas State Board of Chiropractic Examiners, during the term of his or her office or thereafter, shall be liable for damages as a result of any official act in the performance of his or her duty as such a member. Any action therefor shall upon motion be dismissed with prejudice at the cost of the plaintiff.

History. Acts 1971, No. 706, § 24; A.S.A. 1947, § 72-438.

17-81-204. Organization — Meetings.

(a) The Arkansas State Board of Chiropractic Examiners shall maintain and operate an office for the administration of its business.

(b) It shall meet in July of each year and from its members elect a president, secretary, and treasurer. The officers so elected shall hold office for a period of one (1) year or until their successors are elected and have qualified.

(c)(1) It shall be the duty of the board to meet regularly one (1) time in every six (6) months for the purpose of conducting the business of the board.

(2) Special meetings of the board may be called at any time at the pleasure of the president or by the secretary on the request of any two (2) members of the board.

(3) Four (4) members shall constitute a quorum at any meeting of the board.

(d) The board shall determine by its own rules the time and manner of giving notice to its members.

(e) Any action of the board, except the issuance of temporary licenses, shall require an affirmative vote of a majority of the full membership of the board.

History. Acts 1971, No. 706, §§ 6, 7; 72-421; Acts 1987, No. 354, § 3; 1989 (3rd 1981, No. 51, § 3; A.S.A. 1947, §§ 72-420, Ex. Sess.), No. 30, § 2.

17-81-205. Minutes — Records.

(a) The Executive Director of the Arkansas State Board of Chiropractic Examiners shall keep a record of the minutes of the meetings of the board and a record of the names of all persons making application for license under the provisions of this chapter together with a record of the action of the board thereon.

(b) The executive director shall also keep a roll of the names of all licensed and deceased chiropractors who have been licensed to practice in the State of Arkansas.

(c) The record shall at all reasonable times be open for public inspection.

History. Acts 1971, No. 706, § 8; A.S.A. 1947, § 72-422; Acts 1999, No. 1553, § 3.

17-81-206. Duties and powers.

(a)(1) The Arkansas State Board of Chiropractic Examiners is empowered to incur whatever expenses it may deem necessary or expedient in performing its functions. It may employ whatever assistants it may deem necessary or expedient therefor and fix their compensation.

(2) Each member of the board may receive expense reimbursement and stipends in accordance with §§ 25-16-901, 25-16-902, and 25-16-904 — 25-16-908.

(3) All of the disbursements provided for in this section shall be out of the fees and fines collected by the board.

(b) The board is authorized to:

(1) Promulgate suitable rules and regulations for carrying out its duties under the provisions of this chapter;

(2) Sue and be sued;

(3) Have an official seal which shall bear the words “Arkansas State Board of Chiropractic Examiners”;

(4) Provide a secretary's certificate. The certificate of the secretary of the board under seal shall be accepted in the courts of the state as the best evidence as to the minutes of the board and shall likewise be accepted in the courts of the state as the best evidence as to the registration and nonregistration of any person under the requirements of this chapter;

(5) Adopt and, from time to time, revise such rules and regulations not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this chapter;

(6) Cause the prosecution of all persons violating this chapter and have power to incur necessary expenses therefor;

(7) Keep a record of all its proceedings;

(8) Employ such persons as may be necessary to carry out the work of the board, who shall have their duties and compensation prescribed by the board within appropriations for that purpose;

(9) Fix the time for holding its regular meetings for the examination of applicants;

(10) Examine, license, and renew the licenses of duly qualified applicants. The board shall have exclusive jurisdiction to determine who shall be permitted to practice chiropractic in the State of Arkansas; and

(11) Conduct disciplinary proceedings as provided in this chapter.

(c)(1) In the performance of its duties, the board is empowered to issue subpoenas and thereby compel the attendance of persons before it for the purpose of examining into any facts or conditions properly pending before the board for its action.

(2) All subpoenas issued by the board shall be served in the manner prescribed by law for the service of subpoenas issuing from the courts, and all persons so served shall obey the subpoenas or be subject to the penalties provided by law for the disobedience of subpoenas issuing from the courts.

(3) All persons subpoenaed by the board are entitled to their pay and mileage and shall have all the other rights now provided by law for persons served with subpoenas issuing from the courts.

History. Acts 1971, No. 706, §§ 6, 9; 1977, No. 199, § 3; 1981, No. 51, § 2; 1983, No. 504, § 1; A.S.A. 1947, §§ 72-420, 72-423; Acts 1987, No. 354, § 2; 1997, No. 250, § 154; 1999, No. 1553, § 4.

Publisher's Notes. Acts 1977, No. 199, § 5, provided that it was the intent of the act to abolish the State Healing Arts Board created by Acts 1959, No. 187 and

to remove the requirement that a person take and pass a basic science test as a condition for licensure as a physician. It was further the intent of the act that no agency, person, or board in the state would have the authority to require any person to take and pass the test formerly administered by the State Healing Arts Board as a condition for licensure as a physician.

17-81-207. Executive director.

(a) Pursuant to its authority set forth in § 17-81-206(b)(8), the Arkansas State Board of Chiropractic Examiners may employ an executive director to maintain and operate its office pursuant to its directions.

(b)(1) The executive director in consultation with and review of the board treasurer shall collect all fees and fines on behalf of the board and submit all payment requests on behalf of the board for its state appropriations.

(2) The executive director shall give in writing at the annual meeting of the board a fully itemized report of his or her receipts and disbursements for the preceding year showing the amount of money on hand and shall submit reports for inspection at other times as may be requested by the board or by any of its members.

(3) Copies of the annual reports, actions of the board, examinations, and number licensed for the year, certified by the secretary of the board, shall be submitted by the executive director to the various chiropractic professional organizations in Arkansas.

History. Acts 1971, No. 706, § 25; A.S.A. 1947, § 72-439; Acts 1999, No. 1553, § 5.

A.C.R.C. Notes. The operation of subsection (a) of this section was suspended by adoption of a self-insured fidelity bond

program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

17-81-208. Disposition of funds.

(a) All fees and fines authorized by this chapter are the property of the Arkansas State Board of Chiropractic Examiners and shall be paid to the office of its executive director who shall collect and dispose of such funds on behalf of the board as provided in this chapter. Any surplus in the treasury of the board at the end of the fiscal year shall remain in the treasury and may be expended in succeeding years for the purposes herein set out.

(b) All funds received by the board shall be expended in the furtherance of the purposes of this chapter and the board's duties thereunder, which include, but are not limited to:

(1) The publication and distribution of the Arkansas Chiropractic Practices Act, § 17-81-101 et seq.;

(2) The publication and yearly distribution of a directory of all licensed chiropractic practitioners;

(3) Investigations of violations of this chapter;

(4) Institution of actions to compel compliance with the provisions of this chapter; and

(5) Defense of actions brought against it as a result of its actions under the provisions of this chapter.

History. Acts 1971, No. 706, § 18; A.S.A. 1947, § 72-432; Acts 1999, No. 1553, § 6.

SUBCHAPTER 3 — LICENSING

SECTION.

17-81-301. License required.

17-81-302. Exempted activities.

17-81-303. Unlawful practice — Penalty
— Injunction.

17-81-304. Application — Fees.

17-81-305. Qualifications of applicants.

SECTION.

17-81-306. Examination.

17-81-307. Issuance and recording of licenses.

17-81-308. Temporary licenses.

17-81-309. [Repealed.]

17-81-310. Orientation class.

SECTION.

- 17-81-311. Renewal — Fee.
17-81-312. Renewal — Education requirement.
17-81-313. Disciplinary proceedings — Revocation or suspension.

SECTION.

- 17-81-314. Reinstatement.
17-81-315. Professional titles.
17-81-316. Chiropractic extern program.
17-81-317. Reactivation of lapsed license.

Cross References. Continuing education requirements, § 17-80-104.

Effective Dates. Acts 1981, No. 51, § 6: Feb. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that various sections of the Chiropractic Practices Act are in need of immediate revision and that this act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 50, § 4: Feb. 18, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the health and safety of the residents of this state that legislation be enacted to restrict the authority to perform spinal adjustments, spinal manipulations and spinal mobilizations; that this act is designed to permit only qualified persons to perform such procedures and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being

necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1553, § 23: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that regular examinations for licensure under the Arkansas Chiropractic Practices Act are held in January and July; that brochures containing Arkansas law must be prepared for applicants; that for the effective administration of the Arkansas Chiropractic Practices Act, this act should become effective immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-81-301. License required.

In order to safeguard life and health, any person practicing or offering to practice chiropractic in the state shall be required to submit evidence that he or she is qualified to practice and shall be licensed as provided in this chapter.

History. Acts 1971, No. 706, § 2; A.S.A. 1947, § 72-416; Acts 2001, No. 197, § 1.

17-81-302. Exempted activities.

Nothing herein shall be construed to prohibit or to require a license hereunder with respect to any of the following acts:

- (1) The performance of services in case of an emergency;

(2) The performance of services in this state on an occasional basis, limited to ninety (90) days in each calendar year, by a chiropractor lawfully practicing chiropractic in another state or territory. However, if any such chiropractor performs services on a regular basis, or for his or her regular use maintains or is provided with any office or other place to meet persons for the performance of such services in the State of Arkansas, he or she shall obtain a license to practice chiropractic in the State of Arkansas; or

(3) The practice of medicine and surgery, osteopathy, dentistry, podiatry, optometry, Christian Science, physical therapy, cosmetology, therapy technology, or any other branch of the healing arts as defined by the laws of this state as now or hereafter enacted, it not being intended by this chapter to limit, restrict, enlarge, or alter the privileges and practices of any of these professions or branches of the healing arts.

History. Acts 1971, No. 706, § 26; A.S.A. 1947, § 72-440; Acts 1999, No. 1553, § 7.

CASE NOTES

Illegal Practice of Chiropractic.

Physical therapist's treatments, which caused his patients' spines to "pop," did not fall under the Arkansas Chiropractic Practices Act's physical therapy exemption of subdivision (3) of this section as physical therapy was defined in § 17-93-102(6) (now (5)) as passive movement

within the joint's normal range of motion, "excluding spinal manipulation." *Teston v. Ark. State Bd. of Chiropractic Examiners*, 361 Ark. 300, 206 S.W.3d 796 (2005), cert. denied, *Teston v. Ark. State Bd. of Chiropractic Exam'rs*, 546 U.S. 960, 126 S. Ct. 480, 163 L. Ed. 2d 363 (2005).

17-81-303. Unlawful practice — Penalty — Injunction.

(a) Any person who practices or attempts to practice chiropractic, as defined in this chapter, or use any sign, card, or device to indicate that the person is a professional licensed doctor of chiropractic without having first been licensed or otherwise permitted under the provisions of this chapter to do so shall be guilty of a misdemeanor. Upon conviction, he or she shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or by imprisonment in the county jail for a period of not less than one (1) month nor more than eleven (11) months, or by both fine and imprisonment. Each day shall constitute a separate offense.

(b) The courts of this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of chiropractic in a proceeding by the board or any member thereof, by any citizen of this state in the county in which the alleged unlawful practice occurred or in which the defendant resides, or in Pulaski County. The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this chapter, but the

remedy of injunction shall be in addition to liability to criminal prosecution.

(c)(1) It is unlawful for any person other than a physician licensed to practice chiropractic under the provisions of the Arkansas Chiropractic Practices Act, § 17-81-101 et seq., or a physician licensed to practice medicine under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., to perform spinal mobilizations, spinal adjustments, or spinal manipulations as those terms are defined in § 17-81-102(7).

(2) Nothing contained in this subsection shall be construed to limit or restrict the authority of a licensed physical therapist to practice physical therapy as defined in § 17-93-102(6).

(3) Any person violating the provisions of this subsection shall be guilty of a violation and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000), and each violation shall constitute a separate offense.

(d)(1) If the Arkansas State Board of Chiropractic Examiners determines after due notice and a hearing that any provision of this chapter or any regulation promulgated by the board pursuant to this chapter has been violated, the board may impose a civil penalty not to exceed five thousand dollars (\$5,000) per violation.

(2)(A) The board may file an action in Pulaski County Circuit Court to collect any civil penalty not paid within thirty (30) days of service of the order assessing the penalty unless the circuit court enters a stay of the board's order.

(B) If the board prevails in the action, the defendant shall be directed to pay reasonable attorney's fees and costs incurred by the board in prosecuting the action in addition to the civil penalty.

(3) Any person aggrieved by an action of the board imposing civil penalties may appeal the decision in the manner and under the procedure prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for appeals from administrative decisions.

History. Acts 1971, No. 706, §§ 2, 14, 354, § 9; 1991, No. 983, §§ 1, 2; 2001, No. 22; A.S.A. 1947, §§ 72-416, 72-428, 72-197, §§ 2, 3; 2005, No. 1994, § 479. 436; Acts 1987, No. 50, §§ 1, 2; 1987, No.

CASE NOTES

ANALYSIS

In General.
Spinal Manipulations by Physical Therapist.

In General.
Circuit court did not err in excluding the finding of the Arkansas State Board of Chiropractic Examiners that the physical

therapist was practicing chiropractic medicine without a license because the board did not find that his practice of chiropractic medicine was negligent or below the standard of care; the court found that the fact that the therapist had committed a statutory violation would have been unfairly prejudicial. Fryar v. Touchstone Physical Therapy, Inc., 365 Ark. 295, 229 S.W.3d 7 (2006).

Spinal Manipulations by Physical Therapist.

Evidence supported the Arkansas State Board of Chiropractic Examiners' finding that physical therapist's treatments, which caused his patients' spines to "pop," were "spinal manipulations" as defined in

§ 17-81-102(7) and could only be performed by licensed chiropractors. *Teston v. Ark. State Bd. of Chiropractic Examiners*, 361 Ark. 300, 206 S.W.3d 796 (2005), cert. denied, *Teston v. Ark. State Bd. of Chiropractic Exam'rs*, 546 U.S. 960, 126 S. Ct. 480, 163 L. Ed. 2d 363 (2005).

17-81-304. Application — Fees.

(a)(1) Applications for license to practice chiropractic in the State of Arkansas shall be made to the Executive Director of the Arkansas State Board of Chiropractic Examiners in writing on forms furnished by the board. The application shall be signed by the applicant in his or her own handwriting and acknowledged before an officer authorized to administer oaths.

(2) The applicant must submit proof satisfactory to the board of graduation from a chartered school or college of chiropractic as herein described and file with his or her application the affidavits of at least two (2) licensed and reputable doctors of chiropractic showing him or her to be possessed of good moral character.

(3) The application shall be accompanied by the payment of one hundred fifty dollars (\$150), and fifty dollars (\$50.00) for an orientation fee.

(4) The application shall be filed with the executive director not less than forty-five (45) days prior to the next regular meeting of the board.

(b) If the applicant is approved, the applicant shall be admitted for examination. Should the applicant pass the examination, no part of the fee shall be returned, and he or she shall be issued a license to practice chiropractic in accordance with the provisions of this chapter.

(c) If the applicant is not approved, he or she shall be notified of the reasons for the disapproval.

(d) Should an applicant be approved but fail to appear for the examination, no part of his or her fee shall be returned, but he or she shall be eligible for examination at a later date upon at least thirty (30) days' prior notice to the board.

(e) Should the approved applicant fail the examination, no part of his or her fee shall be returned, and he or she shall be eligible for reexamination at a later date, at the discretion of the board, and upon paying an examination fee of twenty-five dollars (\$25.00) up to seventy-five dollars (\$75.00) per failed subject.

History. Acts 1971, No. 706, § 9; 1977, No. 199, § 3; 1983, No. 504, § 1; A.S.A. 1947, § 72-423; Acts 1987, No. 354, §§ 4, 5; 1999, No. 1553, § 8.

Publisher's Notes. Acts 1977, No. 199, § 5, provided that it was the intent of the act to abolish the State Healing Arts Board created by Acts 1959, No. 187 and to remove the requirement that a person

take and pass a basic science test as a condition for licensure as a physician. It was further the intent of the act that no agency, person, or board in the state would have the authority to require any person to take and pass the test formerly administered by the State Healing Arts Board as a condition for licensure as a physician.

17-81-305. Qualifications of applicants.

(a) To qualify to take the examination, an applicant shall:

- (1) Be at least twenty-one (21) years of age;
- (2) Have successfully completed not less than a minimum of sixty (60) semester credit hours of college education, to include a minimum of thirty (30) semester credit hours in the field of science;
- (3) Not have had a license to practice chiropractic in any other state suspended or revoked nor have been placed on probation for any cause;
- (4) Possess a valid "doctor of chiropractic" degree from a chiropractic institution whose requirements include a course of instruction of not fewer than four (4) years of nine (9) academic months each or not fewer than four thousand four hundred (4,400) fifty-minute resident class hours and include one hundred twenty (120) classroom hours of physiological therapeutics;
- (5) Possess a valid National Board of Chiropractic Examiners certificate, to include Parts I, II, and III, and the physiological therapeutics section;
- (6) Be of good moral character;
- (7) Not have been convicted of a felony;
- (8) Not be an habitual user of intoxicants, drugs, or hallucinatory preparations;
- (9) Pay the application fee as provided in § 17-81-304; and
- (10) Cause a certified chiropractic college transcript or National Board of Chiropractic Examiners transcript to be submitted directly from the respective institutions.

(b) An applicant graduated, as of July 19, 1971, from a school or college of chiropractic, the requirements and course of instruction of which were equal and comparable to other recognized schools or colleges of chiropractic at the time of his or her attendance, may be acceptable.

(c) For students enrolled in any approved chiropractic school or college which may not, at the passage date of this act, meet the requirements as set forth in subdivision (a)(4) of this section, the Arkansas State Board of Chiropractic Examiners may waive the requirement in individual cases at its discretion.

(d) In lieu of the practical examination set out in § 17-81-306, with the exception of subdivision (a)(1)(A) in that section, the applicant may present the board with evidence of passing the National Board of Chiropractic Examiners Part IV with a minimum score of 375 which shall be accepted by the board as a passing grade.

History. Acts 1971, No. 706, § 10; A.S.A. 1947, § 72-424; Acts 1987, No. 354, § 6; 1989, No. 763, § 1; 1991, No. 786, § 25; 1993, No. 1219, § 14; 1999, No. 1553, § 9.

Publisher's Notes. In reference to the term "at the passage date of this act," Acts 1971, No. 706, was signed by the Governor

on April 28, 1971, and took effect ninety days after adjournment of the General Assembly on April 19, 1971.

Acts 1991, No. 786, § 37, provided, "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All such acts shall have

full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts

and as amending or repealing the appropriate parts of the Arkansas Code of 1987.”

17-81-306. Examination.

(a)(1) Examinations shall be given in English and in writing, except for certain applicants with disabilities such as blind persons, and shall include the following subjects:

- (A) Practice management, ethics, and jurisprudence;
- (B) Physical and clinical diagnosis;
- (C) Chiropractic examination procedures;
- (D) Chiropractic adjustive and manipulative therapeutics;
- (E) X-ray interpretations; and
- (F) Chiropractic philosophy.

(2) Examinations for applicants having passed Part III on the National Board of Chiropractic Examiners shall include only the following subjects:

- (A) Practice, ethics, and jurisprudence;
- (B) Chiropractic examination procedures;
- (C) Chiropractic adjustive and manipulative therapeutics; and
- (D) Physical and clinical diagnostic methods.

(b) The Arkansas State Board of Chiropractic Examiners shall grade all papers and notify all applicants of the results within forty-five (45) days of the examination.

(c) Each applicant failing the examination shall be furnished a list of his or her grades. He or she shall be eligible for reexamination, as put forth in the rules and regulations of the board, upon request and the payment of the required fee.

(d) All examination papers shall be retained by the board for a minimum period of two (2) years and shall be available for inspection, by appointment, by any aggrieved applicant.

History. Acts 1971, No. 706, § 10; A.S.A. 1947, § 72-424; Acts 1987, No. 354, § 7; 1989, No. 763, § 2; 1997, No. 208, § 14; 1999, No. 1553, § 10.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: “Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals

with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987.”

17-81-307. Issuance and recording of licenses.

(a) The Arkansas State Board of Chiropractic Examiners shall issue licenses to all applicants who have been approved, paid all the required fees, and gained a satisfactory grade on examination, with a general average of seventy-five percent (75%) with no subject falling below sixty percent (60%).

(b)(1) Each person receiving a license from the board, prior to practicing chiropractic, shall have the certificate recorded in the office of the county clerk of the county where he or she proposes to practice.

(2) When the licensee moves to another county for the purpose of continuing the practice of chiropractic, he or she shall file for record, with the county clerk of the county to which he or she moves, a certified copy of his or her license.

(3) The fee for each recording of each license shall be two dollars (\$2.00).

(4) Each licensee shall display conspicuously in his or her principal place of business or place of employment the license issued by the board. The annual renewal certificate shall be displayed in connection with the original license.

History. Acts 1971, No. 706, § 10; A.S.A. 1947, § 72-424; Acts 1987, No. 354, § 7; 1999, No. 1553, § 11.

17-81-308. Temporary licenses.

Upon satisfactory evidence being submitted to the Arkansas State Board of Chiropractic Examiners as to an applicant's ability and integrity and when no regular examination will be held within thirty (30) days from the date of an application for a temporary license, the board may, if approved by at least two-thirds ($\frac{2}{3}$) of the membership of the board, issue to the applicant a permit to practice until the next regular meeting of the board.

History. Acts 1971, No. 706, § 12; A.S.A. 1947, § 72-426; Acts 1989 (3rd Ex. Sess.), No. 30, § 3.

17-81-309. [Repealed.]

Publisher's Notes. This section, concerning reciprocity, was repealed by Acts 1989 (3rd Ex. Sess.), No. 30, § 4. The section was derived from Acts 1971, No. 706, § 13; A.S.A. 1947, § 72-427.

17-81-310. Orientation class.

(a) The Arkansas State Board of Chiropractic Examiners is authorized to conduct an orientation class for all new licensees.

(b) The board is authorized to include in the orientation class instruction relating to office procedures, the filing of insurance claims, and such other matters as the board may deem necessary or appropriate to equip new licensees to establish and maintain a practice and to effectively and efficiently operate and manage their offices and other facilities related to their practice of chiropractic practice.

History. Acts 1983, No. 504, § 3; A.S.A. 1947, § 72-442; Acts 1999, No. 1553, § 12.

17-81-311. Renewal — Fee.

(a)(1) The Arkansas State Board of Chiropractic Examiners may charge an annual renewal fee not to exceed three hundred dollars (\$300) for the license. However, in its discretion, the board may set the renewal fee for license holders not practicing in this state, or for those inactive, at a lower fee than for those practicing in this state.

(2) The board may waive the renewal fee for all licentiates who are serving in the armed services at the time the fee is due.

(b) If the license renewal fee is not paid by January 1 of each year or within sixty (60) days from the mailing of notice by the board, whichever is the later date, the license shall automatically expire and be forfeited. The license can only be reinstated upon payment of all sums due, and, in its discretion, the board may assess the delinquent holder an additional sum as a penalty.

(c) A renewal fee will be considered "paid" pursuant to this section if it is received in the board office or postmarked on or before the date the fee is due. If a license expires and is forfeited because the renewal fee is not paid on time, the license may be reinstated upon payment of the delinquent fee due, payment of a penalty of two hundred dollars (\$200), and complying with the continuing education requirements of § 17-81-312.

(d) Failure of the licensee to receive the renewal form shall not relieve him or her of the duty to renew his or her license and pay the fee required by this chapter.

History. Acts 1971, No. 706, § 11; Acts 1987, No. 354, § 8; 1989 (3rd Ex. 1983, No. 504, § 2; A.S.A. 1947, § 72-425; Sess.), No. 30, § 1; 1999, No. 1553, § 13.

17-81-312. Renewal — Education requirement.

(a) The Arkansas State Board of Chiropractic Examiners shall not renew the license of any person actively engaged in practice within the State of Arkansas unless the person presents to the board evidence of attendance during the preceding twelve (12) months at:

(1) An approved educational session or sessions of not less than twenty-four (24) hours' duration conducted by an approved chiropractic institution of learning or by some association approved by the board for the teaching of chiropractic philosophy and scientific courses pertaining to the profession; or

(2) An educational course conducted by the board.

(b)(1) The board may waive the requirement upon being presented a certificate from the doctor in charge that the license holder was physically unable on account of sickness or injury, or upon a showing that the license holder was in military service, when the course was conducted within this state during the preceding twelve (12) months.

(2) The board may waive the requirement for any other valid reason.

(3) Any person who is initially licensed in January shall be required to complete twenty-four (24) hours of continuing education by Decem-

ber 31 of that year, and each year thereafter comply with subdivision (a)(1) of this section.

(4) Any person who is initially licensed in July shall submit a certificate of attendance of a minimum of twelve (12) hours of continuing education program approval by the board. Each year thereafter the doctor shall submit a certificate of attendance of completion of twenty-four (24) hours of continuing education seminars by December 31 of each year.

(c) The presentation of a fraudulent or forged evidence of attendance at an educational session shall be a cause for suspension or revocation of the holder's license.

History. Acts 1971, No. 706, § 11; Acts 1993, No. 392, § 6; 1995, No. 618, 1981, No. 51, § 4; A.S.A. 1947, § 72-425; § 1; 1999, No. 1553, § 14.

17-81-313. Disciplinary proceedings — Revocation or suspension.

(a) The Arkansas State Board of Chiropractic Examiners shall have sole authority over licensed chiropractors to levy a civil penalty of not more than five thousand dollars (\$5,000) nor less than one thousand dollars (\$1,000) for each violation, to deny, place under probation, suspend, or revoke any license to practice chiropractic issued by the board or applied for in accordance with the provisions of this chapter, or otherwise to discipline a licensee upon proof that the person:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice chiropractic;

(2) Is guilty of crime or gross immorality;

(3) Is unfit or incompetent by reason of negligence, habits, or other causes;

(4) Is habitually intemperate or is addicted to the use of habit-forming drugs;

(5) Is mentally incompetent;

(6) Is guilty of unprofessional conduct;

(7) Is guilty of fraud or deceit in filing insurance forms, documents, or information pertaining to the health or welfare of a patient; or

(8) Has willfully or repeatedly violated any of the provisions of this chapter.

(b) Proceedings under this section shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1971, No. 706, § 27; § 10; 1993, No. 392, § 7; 1999, No. 1553, A.S.A. 1947, § 72-441; Acts 1987, No. 354, § 15.

CASE NOTES

ANALYSIS

Constitutionality.
Authority of Board.
Due Process.
Hearing.

Constitutionality.

The terms "gross immorality" and "un-professional conduct" do not render this section unconstitutional since those terms are readily susceptible to a common understanding. *Buhr v. Arkansas State Bd. of Chiropractic Exmrs.*, 261 Ark. 319, 547 S.W.2d 762 (1977).

Authority of Board.

Authority of the board to revoke a license is not an arbitrary authority but must be exercised in a proper manner.

Kuhl v. Arkansas State Bd. of Chiropractic Exmrs., 236 Ark. 58, 364 S.W.2d 790 (1963) (decision under prior law).

Due Process.

Assertion that the composition of the board resulted in unequal treatment amounting to bias or a denial of due process in suspension proceeding was not demonstrated. *Buhr v. Arkansas State Bd. of Chiropractic Exmrs.*, 261 Ark. 319, 547 S.W.2d 762 (1977).

Hearing.

In proceeding under former section, the board was not bound by the strict rules of evidence. *Kuhl v. Arkansas State Bd. of Chiropractic Exmrs.*, 236 Ark. 58, 364 S.W.2d 790 (1963) (decision under prior law).

17-81-314. Reinstatement.

(a) A chiropractic license which has been revoked for repeated violation of any of the causes enumerated in § 17-81-313 shall not be eligible for reinstatement.

(b)(1) A license which has been suspended may be reinstated upon expiration of the period of suspension and upon satisfactory assurance of proper conduct, by notarized statement of intent, by the suspended licensee.

(2) The statement of intent shall be filed with the Secretary of the Arkansas State Board of Chiropractic Examiners at least thirty (30) days before the expiration of the period of suspension, accompanied by a fee of fifty dollars (\$50.00) if the period of suspension is less than a year, and additionally by the regular yearly renewal fee if the period of suspension exceeds twelve (12) months.

(3) All fees shall be paid by certified check or postal money order.

History. Acts 1971, No. 706, § 27;
A.S.A. 1947, § 72-441.

17-81-315. Professional titles.

(a) Each holder of a license under the provisions of this chapter shall be privileged to use after his or her name:

(1) Any of the following terms: "Doctor of Chiropractic"; "Chiropractic Physician"; "Chiropractor"; and "D.C."; and

(2) The use of titles from any special certification issued through courses or seminars of instruction for professional learning by colleges conducting or sponsoring such courses or seminars holding status with the Council on Chiropractic Education or those titles issued in like manner, not excluding honorary titles, by instruction and sponsored by

the International Chiropractors Association or the American Chiropractic Association.

(b) Nothing in this section shall exclude the use of titles issued by colleges or universities accredited by the United States Department of Education granting degrees such as B.S., M.S., M.A., Ph.D., or other similar degrees.

History. Acts 1971, No. 706, § 16; A.S.A. 1947, § 72-430; Acts 1999, No. 1553, § 16.

17-81-316. Chiropractic extern program.

(a) The Arkansas State Board of Chiropractic Examiners may establish a chiropractic extern program to allow chiropractic graduates to practice in a licensed chiropractor's office until the graduate is licensed to practice chiropractic in this state.

(b) Any graduate from a chiropractic school accredited by the Council on Chiropractic Education or similar government-approved organization is eligible to be involved in the extern program for a maximum of two (2) years from the date of graduation.

(c) Any licensed chiropractor may serve as a preceptor in the extern program upon satisfying criteria established by the board.

(d)(1) Applications to participate in the chiropractic extern program as a preceptor or an extern shall be made to the Arkansas State Board of Chiropractic Examiners in writing on forms furnished by the board.

(2) Each preceptor shall submit a registration fee of one hundred dollars (\$100) with the application.

(3) Each extern shall submit a registration fee of fifty dollars (\$50.00) with the application.

(4) Each extern shall pay tuition of twenty-five dollars (\$25.00) per month for each month the extern is participating in the extern program.

(5) Each extern shall be fairly compensated for his or her services by the preceptor.

(e)(1) Chiropractic externs may assist chiropractors in the performance of those duties that are lawful and ethical, including, but not limited to, physical examinations, patient consultations, X-ray examinations, specific chiropractic adjustment procedures, and physical therapeutic approaches, as appropriate.

(2) Chiropractic externs may not diagnose a condition nor prescribe a health care regimen, nor sign insurance forms or any other forms which require a licensed chiropractor's signature.

(3) All duties of a chiropractic extern shall be performed under the direct supervision of a licensed chiropractor.

History. Acts 1993, No. 392, §§ 1-5.

17-81-317. Reactivation of lapsed license.

(a) Any licensee who allows his or her license to lapse by failing to renew the license as provided under § 17-81-311 may apply to the Arkansas State Board of Chiropractic Examiners for a reinstatement of his or her license and must submit to the board a reinstatement fee of twenty-five dollars (\$25.00) together with all back fees, plus proof of compliance with the continuing education requirements of § 17-81-312.

(b) The delinquent licensee must obtain verification from all states in which he or she has practiced indicating whether or not disciplinary action has been taken against the licensee during that period.

(c) If the licensee's license has been inactive for a period of five (5) years, as a condition of reactivation the board may require the licensee to enroll in and pass a refresher course approved by the board at an accredited chiropractic college or to pass a competency exam given by the board.

History. Acts 1999, No. 1553, § 17;
2001, No. 1553, § 25.

CHAPTER 82**DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF DENTAL EXAMINERS.
3. LICENSING GENERALLY.
4. LICENSING OF CERTAIN DENTAL ASSISTANTS.
5. ANESTHETICS AND SEDATIVES.
6. MOBILE DENTAL FACILITIES.

RESEARCH REFERENCES

ALR. Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice. 22 A.L.R.4th 668.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Improper or immoral sexually related conduct toward patient as grounds for disciplinary action against physician, dentist or other licensed healer. 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th

132.

Necessity of expert evidence in proceeding for revocation of license of physician, surgeon or dentist. 74 A.L.R.4th 969.

Liability for dental malpractice in provision or fitting of dentures. 77 A.L.R.4th 222.

Liability of doctor or health practitioner to third party contracting contagious disease from doctor's patient. 3 A.L.R.5th 370.

Medical malpractice: Who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice. 12 A.L.R.5th 1.

State law criminal liability of licensed

physician for describing or dispensing drug or similar controlled substance. 13 A.L.R.5th 1.

False or fraudulent statements or non-disclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner. 32 A.L.R.5th 57.

Allowance of punitive damages in medical malpractice actions. 35 A.L.R.5th 145.

Recovery for emotional distress based on fear of contracting HIV or AIDS. 59

A.L.R.5th 535.

Liability of hospital or medical practitioner under doctrine of strict liability in tort, or breach of warranty, for harm caused by drug, medical instrument, or similar device used in treating patients. 65 A.L.R.5th 357.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., § 6 and § 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

CASE NOTES

ANALYSIS

Constitutionality.

Regulation of Profession.

Constitutionality.

Since the state has the right under its police power to regulate the practice of dentistry and prescribe such rules as it deems necessary for protection of public safety, health, and welfare, subchapters 1-3 of this chapter are not repugnant to U.S. Const., Amendments 1 and 14. *Missionary Supporters, Inc. v. Arkansas State*

Bd. of Dental Exmrs., 231 Ark. 38, 328 S.W.2d 139 (1959).

Regulation of Profession.

Subchapters 1-3 of this chapter dispel any doubt that the State of Arkansas intends to regulate the profession of dentistry and to restrain those who fail to heed the statutes and regulations. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-82-101. Short title.

17-82-102. Definitions.

17-82-103. Employment of hygienists —
Scope of duties.

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17-82-105. Sales of dental services or appliances.

SECTION.

17-82-106. Advertising.

17-82-107. Pharmacists authorized to fill prescriptions.

17-82-108. Dental colleges.

17-82-109. Enforcement.

Cross References. Dental Corporation Act, § 4-29-401 et seq.

Effective Dates. Acts 1955, No. 14, § 40: Jan. 27, 1955. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that existing laws regulating the practice of dentistry are inadequate to protect the public against

quackery and incompetency and to protect licensed dentists and dental hygienists against the practice of such arts by unlicensed persons, that there is urgent need for such protection, and that enactment of this measure will remedy this dangerous situation. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public

peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1969, No. 91, § 8: Feb. 21, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the authority of the State Board of Dental Examiners to define those acts which constitute the practice of dentistry and to prescribe the services which may be performed by Dental Hygienists and Dental Assistants is not clearly defined in the present laws; that the State Board of Dental Examiners does not now have the necessary authority to license and regulate dental specialists; and that the immediate effectiveness of this act is necessary to clarify and to prescribe the authority of the Board in these vital areas in order that the public will be properly protected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1973, No. 85, § 10: Feb. 9, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the authority of the State Board of Dental Examiners to regulate the form of certain advertising is not clearly defined in the present laws; that the State Board of Dental Examiners does not now have the necessary authority to accept the results of the National Board of Dental Examiners and to cooperate with other states in administering clinical examinations; that the State Board of Dental Examiners does not have authority to establish examination and licensing fees for dentists and dental hygienists; that the State Board of Dental Examiners does not now have the necessary authority to establish by regulation standards of professional conduct or to revoke or suspend licenses for violation of said standards; that the Dental Practice Act does not now exempt from licensing requirements activities of dental students, interns or residents in approved programs of study, internship or residency within this state; that it is necessary to clarify and prescribe the authority of the board in these vital areas in order that the public will be properly protected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate

preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1977, No. 258, § 9: Mar. 11, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain language used in defining the practice of dental hygiene in the present law is archaic; that present law prohibits foreign dentists and dental graduates from practicing in this state; that certain fees required to be paid by dentists and dental hygienists as a condition of licensure and renewal thereof are too low to generate sufficient revenue for the board to effectively administer the law; that the secretary-treasurer of the board cannot now receive a per diem allowance as can other members of the board; that teachers of dentistry in a purely academic setting are not now exempt from the requirements of licensure; and that it is necessary to clarify and prescribe the authority of the board in these vital areas in order that the public be properly protected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1989, No. 363, § 4: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that existing laws regulating the practice of dentistry provide that one cannot practice under a corporate or fictitious name; that the provisions to permit the practice of dentistry under a corporate or fictitious name is necessary to insure the proper enforcement of the provisions governing the practice of dentistry in the State of Arkansas; that there is an emergency need for such a provision and that an enactment of the measure will remedy this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in force and effect from and after its passage and approval."

Acts 1993, No. 883, § 5: Apr. 5, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need to authorize dental hygienists to work under general supervision of a licensed dentist in

certain settings; that this act is designed to permit such practice under strict guidelines and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 105, § 5: Feb. 1, 1995.
Emergency clause provided: “It is hereby found and determined by the General As-

sembly of the State of Arkansas that it is necessary for a dental hygienist to provide local anesthetic services to the general public and that therefore immediate effect should be given to this measure. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

17-82-101. Short title.

This chapter may be known and cited as the “Arkansas Dental Practice Act”.

History. Acts 1955, No. 14, § 1; A.S.A. 1947, § 72-534.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Professions, Occupations, and Businesses, 24 U. Ark. Little Rock L. Rev. 535.

17-82-102. Definitions.

As used in this chapter:

- (1)(A) “Practicing dentistry” means:
 - (i) The evaluation, diagnosis, prevention, and treatment by non-surgical, surgical, or related procedures of diseases, disorders, and conditions of the oral cavity, maxillofacial area, and the adjacent and associated structures and their impact on the human body, but not for the purpose of treating diseases, disorders, and conditions unrelated to the oral cavity, maxillofacial area, and the adjacent and associated structures; and
 - (ii) The sale or offer for sale of those articles or services of dentistry enumerated in § 17-82-105(a).
- (B) “Practicing dentistry” shall include, but not be limited to, the administration of anesthetics for the purpose of or in connection with the performance of any of the acts, services, or practices enumerated or described in this section.
- (C) Nothing herein shall be construed to prohibit a licensed physician from extracting teeth in an emergency when, in his or her considered professional judgment, it is necessary and when it is not practicable or reasonable to secure the services of a licensed dentist; and
- (2)(A) “The practice of dental hygiene” means the assessment, prevention, and treatment of oral diseases provided by a licensed dental

hygienist under the supervision of a licensed dentist as set out in the regulations of the Arkansas State Board of Dental Examiners.

(B) The practice of dental hygiene shall include the removal of deposits from supragingival and subgingival surfaces of the teeth and any other services which the board may authorize by regulation and which are not prohibited by any provision of this chapter.

History. Acts 1955, No. 14, §§ 10, 13; 543, 72-546; Acts 1999, No. 143, § 1; 2001, 1969, No. 91, § 1; 1977, No. 258, § 1; No. 439, § 1. 1981, No. 889, § 1; A.S.A. 1947, §§ 72-

CASE NOTES

ANALYSIS

Denturists.

Practicing Dentistry.

Denturists.

In enacting subchapters 1-3 of this chapter and § 4-29-401 et seq., the General Assembly meant to preclude denturists, acting in concert with licensed dentists, from owning or managing dental facilities where nonlicensed persons would make impressions for dentures; thus, the board was well within its authority in adopting and enforcing regulations defining the making of such impressions as the practice of dentistry. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

Practicing Dentistry.

Testimony clearly brought missionary training school within definition of "practicing dentistry." *Missionary Supporters, Inc. v. Arkansas State Bd. of Dental Exmrs.*, 231 Ark. 38, 328 S.W.2d 139 (1959).

Arkansas State Board of Dental Examiners was a necessary party in a case involving the issue of whether a dentist performing certain surgical procedures was engaged in the practice of medicine. *Arkansas State Medical Bd. v. Bolding*, 324 Ark. 238, 920 S.W.2d 825 (1996).

The practice of dentistry or the definition of oral and maxillofacial surgery does not include such procedures as scalp surgeries, eyelid surgeries, and facelifts as a matter of law. *Arkansas State Medical Bd. v. Bolding*, 324 Ark. 238, 920 S.W.2d 825 (1996).

17-82-103. Employment of hygienists — Scope of duties.

(a) Licensed dentists may employ licensed dental hygienists to act as assistants and to perform the acts, services, and practices described in § 17-82-102 consistently with the provisions of subsection (b) of this section.

(b)(1) No dental hygienist shall engage in any of the acts, services, or practices described in § 17-82-102 and the regulations of the Arkansas State Board of Dental Examiners except as specifically provided in that section and those regulations.

(2) All dental hygienist acts, services, and practices shall be performed under the supervision of a licensed dentist with the supervision being defined in regulations of the board.

(c)(1) No dental hygienist shall administer any anesthetic other than the administration under the supervision of a licensed dentist of a local anesthetic using topical application or regional injection of a drug as delineated in regulations promulgated by the board.

(2) A dental hygienist shall apply to the board for a certificate to administer local anesthetics. The board shall not issue a certificate until the applicant has met the requirements set forth by the board.

(3) The board shall require proof of a current health-care-provider-level basic life support certificate before issuing a certificate and a yearly renewal certificate to administer local anesthetics.

(4) The board may establish fees for services relating to certification and certification renewal.

(d) A dental hygienist who violates any provision of this section is subject to the penalties and liabilities of § 17-82-301(b) and (c).

History. Acts 1955, No. 14, §§ 14-16, 547 — 72-549, 72-551; Acts 1995, No. 105, 18; 1969, No. 91, § 4; A.S.A. 1947, §§ 72- § 1; 2001, No. 439, § 2.

17-82-104. Unlawful practice.

(a) It is unlawful for a dentist or dental hygienist to:

(1)(A) Practice in the State of Arkansas under any name other than his or her own true name. However, a dentist may practice under a corporate name that complies with the Dental Corporation Act, § 4-29-401 et seq.

(B) A dentist or a dental corporation may practice under a fictitious name if the name has been registered with and approved by the Arkansas State Board of Dental Examiners. The fictitious name must comply with the rules and regulations of the board and must not be false or misleading to the general public; or

(2) Aid or assist in any manner any unlicensed person to practice dentistry or dental hygiene or any branch thereof.

(b)(1) It is unlawful for a dentist, whether in practice as owner, proprietor, manager, employee, or partner, to allow any person other than a dentist licensed by the board to:

(A) Direct the dentist's practice; or

(B) Direct, participate in, or affect the diagnosis or treatment of patients under the dentist's care.

(2) However, the phrase "any person" as used in this subsection shall not apply to a patient's dental insurer or dental HMO or a patient's designated utilization review organization.

(c) It is unlawful for any corporation to practice dentistry or dental hygiene or to hold itself out as entitled to engage therein.

(d)(1) A registered licensed dental hygienist working at a Department of Correction or Department of Community Correction facility may work under the general supervision of a licensed dentist.

(2)(A) As used in this subsection, "general supervision" means that a licensed dentist has authorized a procedure performed by a dental hygienist but the licensed dentist is not required to be present in the treatment facility while the procedure is being performed by the dental hygienist.

(B) "General supervision" includes the following restrictions:

(i) The dentist shall establish a written office protocol that specifically indicates when a dental hygienist may treat a patient and when a patient is to be seen by a dentist;

(ii) The dental hygienist shall specifically adhere to the protocol for treatment developed by the dentist;

(iii)(a) A dental hygienist working under general supervision may perform any duties that may be delegated to a dental hygienist under this subchapter or the rules of the Arkansas State Board of Dental Examiners.

(b) A dental hygienist may perform duties under subdivision (d)(2)(B)(iii)(a) of this section only after a licensed dentist has examined the patient; and

(C) The dental hygienist shall review a patient's dental health history before treatment.

(e)(1) A person who violates any provision of this section shall upon conviction be guilty of a violation and shall be fined in any sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

(2) Each day a violation continues shall constitute a separate offense.

(3) In addition to the foregoing criminal sanctions, a person who violates the provisions of this section is subject to the liabilities of § 17-82-301(b).

History. Acts 1955, No. 14, § 26; A.S.A. 1947, § 72-559; Acts 1989, No. 363, § 1; 1993, No. 883, § 1; 2001, No. 950, § 1; 2005, No. 1994, § 85; 2009, No. 203, § 1.

Publisher's Notes. Dental corpora-

tions are now permitted to practice under the authority granted by the Dental Corporation Act, § 4-29-401 et seq.

Amendments. The 2009 amendment rewrote (d).

CASE NOTES

Cited: *Hinsley v. Arkansas State Bd. of Dental Exmrs.*, 276 Ark. 243, 633 S.W.2d 696 (1982); *Brazil v. Arkansas Bd. of Den-*

tal Exmrs., 593 F. Supp. 1354 (E.D. Ark. 1984).

17-82-105. Sales of dental services or appliances.

(a) Any person other than a licensed dentist who sells or delivers or offers to sell or deliver to the general public the services of construction, repair, reproduction, duplication, alteration, adjustment, cleaning, polishing, refinishing, or processing in any other manner of any artificial or prosthetic tooth or teeth, bridge, crown, denture, restoration, appliance, device, structure, or material or orthodontic appliance or material to be worn or used in the mouth is subject to the penalties and liabilities prescribed in § 17-82-301(b) and (c). This section does not prohibit selling or delivering or offering to sell or deliver any of such articles to a licensed dentist.

(b) Any licensed dentist who employs or engages the services of a dental laboratory or dental laboratory technician or any other person, firm, or corporation to perform any of the operations or to fabricate any of the appliances or devices referred to in subsection (a) of this section

shall furnish that person, firm, or corporation with a written work authorization which shall contain:

(1) The name and address of the person, firm, or corporation to which the work authorization is directed;

(2) The patient's name or an identification number. If a number is used, the patient's name shall be written upon the duplicate copy of the work authorization retained by the dentist;

(3) The date on which the work authorization was written;

(4) A description of the work to be done, including diagrams, if necessary;

(5) A specification of the type and quality of materials to be used; and

(6) The signature of the dentist and the number of his or her license to practice dentistry.

(c) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain a duplicate copy for a period of two (2) years.

(d) Any licensed dentist shall be guilty of a Class A misdemeanor and the Arkansas State Board of Dental Examiners may revoke or suspend the license of that dentist if that dentist:

(1) Employs or engages the services of any person, firm, or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other dental appliances without first providing the person, firm, or corporation with a written work authorization;

(2) Fails to retain a duplicate copy of the work authorization for two (2) years; or

(3) Commits any violation of this section.

(e) Any person, firm, or corporation shall be guilty of a Class A misdemeanor if that person, firm, or corporation:

(1) Furnishes such services to any licensed dentist without first obtaining a written work authorization from the dentist;

(2) Fails to retain the original work authorization for two (2) years; or

(3) Commits any violation of this section.

History. Acts 1955, No. 14, § 12; 1969, No. 91, § 3; A.S.A. 1947, § 72-545; Acts 2005, No. 1994, § 201.

CASE NOTES

ANALYSIS

Constitutionality.
Antitrust Liability.
Injunction.
Regulations.

Constitutionality.

Statutes requiring that dental laboratories deliver products through a licensed

dentist are clearly a permissible exercise of the state's police power in the area of public health. The fact that the statutes prohibit an untrained and unlicensed individual from making dentures and selling them directly to the public does not violate the individual's due process and equal protection rights. *Hulva v. Arkansas State Bd. of Dental Exmrs.*, 277 Ark. 397, 642 S.W.2d 296 (1982).

Antitrust Liability.

Requirement that work conducted by denturists or dental laboratories be accompanied by a written work order, signed by a licensed dentist, gives rise to no antitrust liability. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

Since any efforts by the Arkansas Dental Association to induce its members not to join with "denturists" in the operation of a dental laboratory constituted nothing more than an attempt to obtain compliance with the law of the State of Arkansas, there could be no Sherman Act liability. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

Injunction.

Where defendant undertook denture servicing in violation of an injunction, he

was properly held in contempt of court despite claim that injunction went beyond terms of this section. *Brazil v. Arkansas State Bd. of Dental Exmrs.*, 279 Ark. 41, 648 S.W.2d 476 (1983).

Regulations.

In enacting subchapters 1-3 of this chapter and § 4-29-401 et seq., the General Assembly meant to preclude denturists, acting in concert with licensed dentists, from owning or managing dental facilities where nonlicensed persons would make impressions for dentures; thus, the board was well within its authority in adopting and enforcing regulations defining the making of such impressions as the practice of dentistry. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

17-82-106. Advertising.

Advertising to the general public for the purpose of soliciting business consisting of any of the acts, services, or practices enumerated in § 17-82-102 or by any regulation or rule promulgated by the Arkansas State Board of Dental Examiners under authority of § 17-82-208 shall not be fraudulent or misleading and shall be in conformity with rules and regulations adopted by the board.

History. Acts 1955, No. 14, § 11; 1969, No. 91, § 2; 1973, No. 85, § 1; 1981, No. 889, § 2; A.S.A. 1947, § 72-544.

17-82-107. Pharmacists authorized to fill prescriptions.

Pharmacists duly licensed in the State of Arkansas are authorized to fill prescriptions in the State of Arkansas for duly licensed dentists of this state for any drug to be used in the practice of dentistry.

History. Acts 1955, No. 14, § 35; A.S.A. 1947, § 72-568.

17-82-108. Dental colleges.

No college of dentistry shall be considered reputable by the Arkansas State Board of Dental Examiners unless it possesses the following qualifications:

(1) It shall be chartered under the laws of the state, territory, or the District of Columbia in which it is located and operated and shall be

authorized by its charter to confer the degree of “Doctor of Dental Surgery” or “Doctor of Medical Dentistry”;

(2) It shall deliver annually a full course of lectures or instruction by a competent faculty or corps of instructors on the following subjects: anatomy, chemistry, physiology, histology, materia medica, therapeutics, dental metallurgy, pathology, bacteriology, operative dentistry, prosthetic dentistry, crown and bridge work, orthodontics, oral surgery, oral hygiene, administration of anesthetics, radiography, and such other subjects as may be recommended by the American Dental Association Council. Each course of instruction shall consist of not fewer than four (4) terms and of not fewer than thirty-two (32) weeks of six (6) days for each term;

(3) It shall possess apparatus and equipment adequate and sufficient for the ready and full teaching of the foregoing subjects; and

(4) It shall be recognized as being reputable by the American Dental Association Council before being recognized as such by the board.

History. Acts 1955, No. 14, § 5; A.S.A. 1947, § 72-538.

CASE NOTES

Injunction.

The operation of missionary training school whose trainees gave free dental service to patients in the surrounding

community was properly enjoined. *Missionary Supporters, Inc. v. Arkansas State Bd. of Dental Exmrs.*, 231 Ark. 38, 328 S.W.2d 139 (1959).

17-82-109. Enforcement.

It is the duty of the several prosecuting attorneys of the State of Arkansas to prosecute to final judgment every criminal violation of this chapter committed within their respective jurisdictions.

History. Acts 1955, No. 14, § 37; A.S.A. 1947, § 72-570.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF DENTAL EXAMINERS

SECTION.

17-82-201. Members — Appointment — Oath.

17-82-202. Members — Qualifications.

17-82-203. Members — Removal.

17-82-204. Members — Liability.

17-82-205. Meetings — Officers.

17-82-206. Records.

SECTION.

17-82-207. Power to sue — Subpoena power — Seal.

17-82-208. Rules and regulations.

17-82-209. Expenses — Compensation of members and employees.

17-82-210. Annual reports.

17-82-211. Disposition of funds.

Cross References. Board members not to be held personally liable for actions as board members, § 17-80-103.

Effective Dates. Acts 1955, No. 14,

§ 40; Jan. 27, 1955. Emergency clause provided: “It has been found and is declared by the General Assembly of the State of Arkansas that existing laws regu-

lating the practice of dentistry are inadequate to protect the public against quackery and incompetency and to protect licensed dentists and dental hygienists against the practice of such arts by unlicensed persons, that there is urgent need for such protection, and that enactment of this measure will remedy this dangerous situation. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1959, No. 4, § 5: Jan. 29, 1959. Emergency clause provided: "It is hereby found that there are inadequate funds available to provide for the examination of dentists who desire to practice in the State of Arkansas, which would create a shortage of dentists. The passage of this act would alleviate that shortage. Therefore, an emergency is found to exist and the passage of this act being necessary to preserve the public health and safety, it shall take effect immediately from and after its passage and approval."

Acts 1969, No. 91, § 8: Feb. 21, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the authority of the State Board of Dental Examiners to define those acts which constitute the practice of dentistry and to prescribe the services which may be performed by Dental Hygienists and Dental Assistants is not clearly defined in the present laws; that the State Board of Dental Examiners does not now have the necessary authority to license and regulate dental specialists; and that the immediate effectiveness of this act is necessary to clarify and to prescribe the authority of the board in these vital areas in order that the public will be properly protected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1973, No. 85, § 10: Feb. 9, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the authority of the State Board of Dental Examiners to regulate the form of certain advertising is not clearly defined in the present laws; that the State Board of Dental Examiners does

not now have the necessary authority to accept the results of the National Board of Dental Examiners and to cooperate with other states in administering clinical examinations; that the State Board of Dental Examiners does not have authority to establish examination and licensing fees for dentists and dental hygienists; that the State Board of Dental Examiners does not now have the necessary authority to establish by regulation standards of professional conduct or to revoke or suspend licenses for violation of said standards; that the Dental Practice Act does not now exempt from licensing requirements activities of dental students, interns or residents in approved programs of study, internship or residency within this state; that it is necessary to clarify and prescribe the authority of the board in these vital areas in order that the public will be properly protected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1977, No. 258, § 9: Mar. 11, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain language used in defining the practice of dental hygiene in the present law is archaic; that present law prohibits foreign dentists and dental graduates from practicing in this state; that certain fees required to be paid by dentists and dental hygienists as a condition of licensure and renewal thereof are too low to generate sufficient revenue for the board to effectively administer the law; that the secretary-treasurer of the board cannot now receive a per diem allowance as can other members of the board; that teachers of dentistry in a purely academic setting are not now exempt from the requirements of licensure; and that it is necessary to clarify and prescribe the authority of the board in these vital areas in order that the public be properly protected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 683, § 2: Apr. 7, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that ex-

isting laws regulating the practice of dentistry provide only that the dental hygienist may vote only on those matters pertaining to dental hygiene; that provision for the Arkansas Board of Dental Examiners to permit the dental hygienist to vote on all matters except the examination and licensing of dentists is necessary to ensure the proper enforcement of the provisions governing the practice of dentistry in the State of Arkansas; that there is an emergency need for such provision; and that enactment of this measure will remedy this dangerous situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, should take effect and be enforced from the date of its approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-82-201. Members — Appointment — Oath.

(a) The Arkansas State Board of Dental Examiners shall be composed of nine (9) members appointed by the Governor for terms of five (5) years:

(1) Six (6) members shall be regularly licensed, registered, and practicing dentists;

(2) One (1) member shall be a regularly licensed, registered, and practicing dental hygienist who shall have all voting powers of a board member;

(3) One (1) member, to be known as the consumer representative, shall be appointed from the state as a member at large. The appointment is subject to confirmation by the Senate. The consumer representative shall not be actively engaged in or retired from the practice of dentistry or dental hygiene. He or she shall be a full voting member but shall not participate in the grading of examinations; and

(4) One (1) member of the board, to represent the elderly, shall be sixty (60) years of age or older, shall not be actively engaged in or retired from the profession of dentistry or dental hygiene, shall be appointed from the state at large subject to confirmation by the Senate, and shall be a full voting member but shall not participate in the grading of examinations.

(b) The consumer representative and the representative of the elderly positions may not be filled by the same person.

(c) The board members shall serve subject to the provisions of this chapter during the remainder of their respective terms and until their successors are appointed and qualified.

(d)(1) On September 1 of each year, or as soon as it is practicable thereafter, the Governor shall appoint a new dentist member, who has been first recommended by the Arkansas State Dental Association, to fill the then-accrued vacancy on the board and who shall serve until his or her successor is appointed and qualified.

(2) The Governor shall appoint a dentist member upon the advice and consent of the Dental Section of the Arkansas Medical, Dental, and Pharmaceutical Association.

(3) The Governor shall proceed to appoint to the board a dental hygienist who has first been recommended by the Arkansas State Dental Hygienist Association. This member shall serve until his or her successor is appointed and qualified.

(e) All vacancies which occur by reason of death, resignation, or in any other manner, except vacancies which occur by the expiration of the term of appointment, shall be filled by the Governor:

(1) The professional members shall be appointed upon the recommendation of the Arkansas State Dental Association, the Arkansas State Dental Hygienist Association, or the Dental Section of the Arkansas Medical, Dental, and Pharmaceutical Association in the manner prescribed for the regular appointments to the board;

(2) All such appointments shall be limited to the unexpired term of the office vacated.

(f) The recommendations of the three (3) associations shall be conveyed to the Governor under a certificate to be executed by the presidents and secretaries of the respective associations.

(g) Each member appointed to the board, before entering upon the duties of his or her office, shall take the oath prescribed by Arkansas Constitution, Article 19, § 20.

History. Acts 1955, No. 14, § 2; 1977, No. 113, §§ 1-3; 1981, No. 197, § 1; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1985, No. 849, § 1; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-535, 72-535.1; Acts 1987, No. 683, § 1; 1999, No. 44, § 1.

Publisher's Notes. The terms of the members of the Arkansas State Board of Dental Examiners, other than the representatives of consumers and the elderly, the dental hygienist, and the dentist who

is nominated upon the advice and consent of the Dental Section of the Arkansas Medical, Dental, and Pharmaceutical Association, are arranged so that one term expires every year.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

CASE NOTES

Antitrust Liability.

The American Dental Association is clearly vested with the responsibility of recommending candidates to the Governor for positions on the board; thus, the association dons the mantle of the state when carrying out its recommendation

function and is consequently immune from Sherman Act liability in performing this function. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

17-82-202. Members — Qualifications.

(a) The professional members of the Arkansas State Board of Dental Examiners shall be regularly licensed, registered, and practicing dentists and dental hygienists, each of whom must be a graduate of a reputable college of dentistry or dental hygiene and must have been a regularly licensed, registered, and practicing dentist or dental hygienist in the State of Arkansas for a period of five (5) years next preceding the date of his or her appointment.

(b) No dentist or dental hygienist is eligible for appointment to the board who is in any way connected with, or interested in, any college of dentistry, a commercial dental laboratory, or the dental supply business.

History. Acts 1955, No. 14, § 3; 1981, No. 197, § 2; A.S.A. 1947, § 72-536.

17-82-203. Members — Removal.

(a) Upon charges filed before it in writing, the Arkansas State Board of Dental Examiners is empowered to remove any member thereof who has been guilty of continued neglect of duty or who is found to be incompetent, dishonorable, or unprofessional.

(b) There shall be no such removal without first giving the accused an opportunity to be heard and to defend the charges against him or her.

(c) A copy of the charges must have been served upon him or her in the manner prescribed by § 17-82-317.

History. Acts 1955, No. 14, § 30; A.S.A. 1947, § 72-563.

17-82-204. Members — Liability.

No member of the Arkansas State Board of Dental Examiners, during the term of his or her office or thereafter, shall be required to defend any action for damages in any of the courts in the State of Arkansas where it is shown that the damages followed or resulted from any of the official acts of the member of the board in the performance of his or her duty as a member. Upon motion, any such action shall be dismissed with prejudice at the cost of the plaintiff.

History. Acts 1955, No. 14, § 29; A.S.A. 1947, § 72-562.

CASE NOTES

Antitrust Liability.

The state, in enacting subchapters 1-3 of this chapter and § 4-29-401 et seq., has clearly evidenced an intent to restrict competition in the practice of dentistry and to restrict trade competition in the dentistry field; therefore, the actions of the board and its officers which prohibit competition fall within the state action immunity doctrine and do not give rise to liability under the Sherman Antitrust Act. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), aff'd, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

Since it is clear that the board is expressly authorized to seek to enjoin those persons who practice dentistry in violation of the Dental Practice Act, the board is simply acting as the enforcement arm of the state when carrying out this "prosecutorial" role, which clearly falls within the "state action" doctrine; thus, the actions of the board and its officers do not give rise to liability under the Sherman Act. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), aff'd, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

17-82-205. Meetings — Officers.

(a)(1) The Arkansas State Board of Dental Examiners shall hold at least one (1) regular annual meeting between May 15 and July 15 of each year.

(2) The specific date is to be determined by the board.

(b)(1) At the annual meeting, the board shall elect a president, a vice president, and a secretary-treasurer.

(2) The terms of these officers shall be for one (1) year and until their successors are elected and assume the duties of their office.

(3) All officers of the board shall assume the duties of their office on September 1 of the year of their election.

(4) The secretary-treasurer shall execute to the board a bond satisfactory to the board to secure the faithful performance of his or her duties and proper accountability for all funds of the board coming into his or her possession or control.

(c) Special meetings of the board may be called by the president at any time, upon giving five (5) days' written notice to the members, unless written notice is waived by the members.

(d) A majority of the board constitutes a quorum for the transaction of all business coming before it.

(e) All proceedings of the board shall be recorded in a permanently bound minute book.

History. Acts 1955, No. 14, § 6; A.S.A. 1947, § 72-539.

A.C.R.C. Notes. The operation of subdivision (b)(4) of this section was suspended by adoption of a self-insured fidelity bond program for public officers,

officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

17-82-206. Records.

The Arkansas State Board of Dental Examiners shall keep a permanent record book in which shall be registered the name, age, address, and license number of each person legally entitled to practice dentistry or dental hygiene in the State of Arkansas, and it shall also keep other permanent records as it may deem necessary or expedient in the performance of its duties.

History. Acts 1955, No. 14, § 6; A.S.A. 1947, § 72-539.

17-82-207. Power to sue — Subpoena power — Seal.

(a) The Arkansas State Board of Dental Examiners, in its name, may sue and be sued in the courts.

(b)(1) In the performance of its duties as herein provided, the board is empowered to issue subpoenas and compel the attendance of persons before it for the purpose of examining any facts or conditions properly pending before the board for its action.

(2) All subpoenas issued by the board shall be served in the manner prescribed by law for the service of subpoenas issuing from the courts, and all persons so served shall obey the subpoenas or be subject to the penalties provided by law for the disobedience of subpoenas issuing from the courts.

(3) All persons subpoenaed by the board are entitled to their fee and mileage and shall have all the other rights now provided by law for persons served with subpoenas issuing from the courts.

(c) The board shall have a seal, and the impress of it shall be attached to all official documents issued by it.

History. Acts 1955, No. 14, § 4; A.S.A. 1947, § 72-537.

CASE NOTES

Antitrust Liability.

The state, in enacting subchapters 1-3 of this chapter and § 4-29-401 et seq., has clearly evidenced an intent to restrict competition in the practice of dentistry and to restrict trade competition in the dentistry field; therefore, the actions of the board and its officers which prohibit competition fall within the state action immunity doctrine and do not give rise to liability under the Sherman Antitrust Act. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

Since it is clear that the board is expressly authorized to seek to enjoin those persons who practice dentistry in violation of the Dental Practice Act, the board is simply acting as the enforcement arm of the state when carrying out this "prosecutorial" role, and the board's execution of this policy clearly falls within the "state action" doctrine; thus, the actions of the board and its officers do not give rise to liability under the Sherman Act. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

17-82-208. Rules and regulations.

(a) The Arkansas State Board of Dental Examiners shall have the power to promulgate rules and regulations in order to carry out the intent and purposes of this chapter.

(b) The board shall by rule or regulation prescribe specifically those acts, services, procedures, and practices which constitute the practice of dentistry.

(c) The board shall also by rule or regulation prescribe those acts, services, procedures, and practices which may be performed by dental hygienists and dental assistants at the direction and under the direct supervision of a licensed dentist and shall impose requirements and restrictions on the performance thereof by dental hygienists and dental assistants as it shall deem proper and necessary to protect and promote the public health and welfare of the citizens of this state.

(d) Rules and regulations promulgated by the board pursuant to the provisions of this section shall be adopted in accordance with the procedure prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and these rules and regulations shall be filed and shall be subject to judicial review as provided in that act.

History. Acts 1955, No. 14, § 4; 1969, 889, § 1; A.S.A. 1947, §§ 72-537.1, 72-No. 91, § 1; 1973, No. 85, § 7; 1981, No. 543.

CASE NOTES

Cited: *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984).

17-82-209. Expenses — Compensation of members and employees.

(a) The Arkansas State Board of Dental Examiners is empowered to incur whatever expenses it may deem necessary or expedient in performing its function.

(b) It may employ whatever assistants it may deem necessary or expedient therefor and fix their compensation.

(c) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(d) The board shall fix the salary of the Secretary-treasurer of the Arkansas State Board of Dental Examiners.

(e) All of the disbursements provided for in this section shall be made out of the fees and fines collected by the board.

History. Acts 1955, No. 14, § 32; 1959, § 72-565; Acts 1987, No. 289, § 1; 1997, No. 4, § 4; 1969, No. 91, § 6; 1977, No. No. 250, § 155. 258, § 5; 1981, No. 889, § 7; A.S.A. 1947,

17-82-210. Annual reports.

(a) The Arkansas State Board of Dental Examiners at its regular annual meeting shall prepare a report of its receipts and disbursements and its transactions in general for the preceding year.

(b) The report shall be filed with the Governor not later than September 1 of each year, and a copy thereof, certified by the President and Secretary of the Arkansas State Board of Dental Examiners, shall be filed at the same time with the Secretary of the Arkansas State Dental Association.

History. Acts 1955, No. 14, § 33; A.S.A. 1947, § 72-566.

17-82-211. Disposition of funds.

All fees authorized by this chapter and all fines imposed by the courts and collected under the provisions of this chapter are the property of the Arkansas State Board of Dental Examiners and shall be paid or delivered to its treasurer to be disbursed as provided in this chapter.

History. Acts 1955, No. 14, § 31; A.S.A. 1947, § 72-564.

SUBCHAPTER 3 — LICENSING GENERALLY**SECTION.**

- 17-82-301. License required — Penalty.
- 17-82-302. Exemptions.
- 17-82-303. Examinations.
- 17-82-304. Dentists generally — Licensing procedure.
- 17-82-305. Dentists — Specialists — Licensing procedure.

SECTION.

- 17-82-306. Dental hygienists — Licensing procedure.
- 17-82-307. Applications — False information.
- 17-82-308. Credentials — Persons licensed in other states.
- 17-82-309. [Repealed.]

SECTION.

- 17-82-310. Annual renewal — Procedure.
- 17-82-311. Renewal — Penalties for non-compliance.
- 17-82-312. Annual renewal — Relicensing.
- 17-82-313. Renewal — Nonresidents.

SECTION.

- 17-82-314. Failure to practice.
- 17-82-315. [Repealed.]
- 17-82-316. Revocation or suspension — Grounds — Effect.
- 17-82-317. Revocation or suspension — Procedure.

Cross References. Continuing education requirements, § 17-80-104.

Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1955, No. 14, § 40; Jan. 27, 1955. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that existing laws regulating the practice of dentistry are inadequate to protect the public against quackery and incompetency and to protect licensed dentists and dental hygienists against the practice of such arts by unlicensed persons, that there is urgent need for such protection, and that enactment of this measure will remedy this dangerous situation. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1959, No. 4, § 5; Jan. 29, 1959. Emergency clause provided: "It is hereby found that there are inadequate funds available to provide for the examination of dentists who desire to practice in the State of Arkansas, which would create a shortage of dentists. The passage of this act would alleviate that shortage. Therefore, an emergency is found to exist and the passage of this act being necessary to preserve the public health and safety, it shall take effect immediately from and after its passage and approval."

Acts 1969, No. 91, § 8; Feb. 21, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the authority of the State Board of Dental Examiners to define those acts which constitute the practice of dentistry and to prescribe the services which may be performed by Dental Hygienists and Dental Assistants is not clearly defined in the present laws; that the State

Board of Dental Examiners does not now have the necessary authority to license and regulate dental specialists; and that the immediate effectiveness of this act is necessary to clarify and to prescribe the authority of the board in these vital areas in order that the public will be properly protected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1973, No. 85, § 10; Feb. 9, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the authority of the State Board of Dental Examiners to regulate the form of certain advertising is not clearly defined in the present laws; that the State Board of Dental Examiners does not now have the necessary authority to accept the results of the National Board of Dental Examiners and to cooperate with other states in administering clinical examinations; that the State Board of Dental Examiners does not have authority to establish examination and licensing fees for dentists and dental hygienists; that the State Board of Dental Examiners does not now have the necessary authority to establish by regulation standards of professional conduct or to revoke or suspend licenses for violation of said standards; that the Dental Practice Act does not now exempt from licensing requirements activities of dental students, interns or residents in approved programs of study, internship or residency within this state; that it is necessary to clarify and prescribe the authority of the board in these vital areas in order that the public will be properly protected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1974 (1st Ex. Sess.), No. 64, § 5: July 22, 1974. Emergency clause provided: "It is hereby found and determined by the Sixty-Ninth General Assembly of the State of Arkansas, meeting in Extraordinary Session, that the rapid increase in inflation has greatly reduced the effective purchasing powers of the state employees' salaries and that the immediate passage of this act is necessary to prevent irreparable harm to the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 369, § 2: Mar. 10, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the cost of operating the functions, powers, and duties of the State Board of Dental Examiners is increasing, that additional funds must be provided if the State Board of Dental Examiners is to be able to render the services and to perform the duties as provided in the Arkansas Dental Practice Act, and that the immediate passage of this act is necessary to enable the Board of Dental Examiners to establish an annual registration fee for dentists at a level adequate to provide needed funds. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 258, § 9: Mar. 11, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain language used in defining the practice of dental hygiene in the present law is archaic; that present law prohibits foreign dentists and dental graduates from practicing in this state; that certain fees required to be paid by dentists and dental hygienists as a condition of licensure and renewal thereof are too low to generate sufficient revenue for the board to effectively administer the law; that the secretary-treasurer of the board cannot now receive a per diem allowance as can other members of the board; that teachers of dentistry in a purely academic setting are not now exempt from the requirements of licensure;

and that it is necessary to clarify and prescribe the authority of the board in these vital areas in order that the public be properly protected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1979, No. 805, § 3: Apr. 10, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly of the State of Arkansas that many dentists and dental hygienists wish to retain their licenses upon retirement and that in such instances the retired dentists and dental hygienists should not be required to pay the same license fees as those persons actively engaged in the profession. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 778, § 3: Mar. 24, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that existing laws regulating the practice of dentistry provide only for the revocation or suspension of the license upon the violation of any of the provisions of the act; that provision for the Arkansas State Board of Dental Examiners to impose a fine or a period of probation in lieu of suspension or probation is necessary to insure the proper enforcement of the provisions governing the practice of dentistry in the State of Arkansas; that there is an emergency need for such provision; and that enactment of this measure will remedy this dangerous situation. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety should take effect and be enforced from the date of its approval."

Acts 1987, No. 497, § 3: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that existing laws regulating the practice of dentistry provide only that the unlicensed practice of dentistry and dental hygiene is a misdemeanor criminal offense; that provision providing that the unlicensed prac-

tice of dentistry or dental hygiene to be a Class D felony is necessary to ensure the proper enforcement of the provisions governing the practice of dentistry in the State of Arkansas; that there is an emergency need for such provision; and that enactment of this measure will remedy this dangerous situation. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, should take effect and be enforced from the date of its approval."

Acts 1987, No. 498, § 3: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that existing laws regulating the advertising of services do not provide for a ban on fraudulent and misleading advertising; the provision for the Arkansas State Board of Dental Examiners to impose sanctions for advertising in a fraudulent and misleading manner is necessary to ensure the practice of dentistry in the State of Arkansas; that there is an emergency need for such provision; that the enactment of this measure will remedy this dangerous situation. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, should take effect and be enforced from the date of its approval."

Acts 1987, No. 499, § 3: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that existing laws regulating the practice of dentistry providing for the licensing of dentists and dental hygienists by credentials, as well as the additional burden of reciprocity with the state from which the dental hygienist was originally licensed that provision for the Arkansas State Board of Dental Examiners to license dental hygienists only by credentials and removing dentists from license here by credentials and eliminating reciprocity with another state is necessary to ensure the proper enforcement of the provisions governing the practice of dentistry in the State of Arkansas; that there is an emergency need for such provision; and that enactment of this measure will remedy this dangerous situation. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the

public peace, health and safety, should take effect and be enforced from the date of its approval."

Acts 1989, No. 364, § 4: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the existing laws regulating a disciplinary hearing before the Arkansas State Board of Dental Examiners is in need of amendment; that the provisions for amendment of the Dental Practice Act which sets forth their procedure to conduct a disciplinary hearing before the Arkansas State Board of Dental Examiners is necessary to insure the proper enforcement of the provisions governing the practice of dentistry in the State of Arkansas; that there is an emergency need for such a provision and that an enactment of the measure will remedy this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 365, § 4: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that existing laws for the issuance of a certificate to practice a specialty in dentistry need to be defined; that the provisions for an examination to be given to one desiring a certificate from the Arkansas State Board of Dental Examiners is necessary to insure the proper enforcement of the provisions governing the practice of dentistry in the State of Arkansas; that there is an emergency need for such a provision and that an enactment of the measure will remedy this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 661, § 3: Mar. 26, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that a need exists to examine the impact and quality of services to be performed by foreign-trained dentists immigrating to Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective

on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

Ark. L. Rev. Case Notes — Equity — Injunctions — Unlicensed Practice of a Profession, 11 Ark. L. Rev. 177.

17-82-301. License required — Penalty.

(a)(1) No person shall practice dentistry or dental hygiene or attempt or offer to practice either within the State of Arkansas without first having been authorized and issued a regular license by the Arkansas State Board of Dental Examiners.

(2) No person shall practice dentistry or dental hygiene or attempt or offer to practice either within the State of Arkansas during any period of suspension of his or her license by the board or after revocation by the board of any license theretofore issued to the offending person.

(b) The board is entitled to the equitable remedy of injunction against any person who practices dentistry or dental hygiene or attempts or offers to practice either in violation of subsection (a) of this section.

(c) Any person who violates any provision of subsection (a) of this section shall be guilty of a Class D felony and shall be subject to imprisonment not to exceed six (6) years in the Department of Correction or a fine of up to ten thousand dollars (\$10,000), or both. Each unauthorized act constitutes a separate offense.

History. Acts 1955, No. 14, §§ 7-9; A.S.A. 1947, §§ 72-540 — 72-542; Acts 1987, No. 497, § 1.

CASE NOTES

ANALYSIS

Denturists.
Injunction.
Unlawful Practice.

Denturists.

In enacting subchapters 1-3 of this chapter and § 4-29-401 et seq., the General Assembly meant to preclude denturists, acting in concert with licensed dentists, from owning or managing dental facilities where nonlicensed persons

would make impressions for dentures. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, *Brazil v. Arkansas State Bd. of Dental Examiners*, 759 F.2d 674 (8th Cir. Ark. 1985).

Injunction.

Where missionary training school clearly violated portions of this section relating to the unlawful practice of dentistry, the board had an absolute right to an injunction against the unlawful prac-

tice. *Missionary Supporters, Inc. v. Arkansas State Bd. of Dental Exmrs.*, 231 Ark. 38, 328 S.W.2d 139 (1959).

Unlawful Practice.

Trained practical dentists practicing dentistry and dental hygiene without having been licensed by the State Board of Dental Examiners were in violation of this

section. *Missionary Supporters, Inc. v. Arkansas State Bd. of Dental Exmrs.*, 231 Ark. 38, 328 S.W.2d 139 (1959).

Cited: *Miller v. Reed*, 234 Ark. 850, 355 S.W.2d 169 (1962); *Brazil v. Arkansas State Bd. of Dental Exmrs.*, 279 Ark. 41, 648 S.W.2d 476 (1983).

17-82-302. Exemptions.

Nothing in this chapter shall prohibit or require a license for the following acts or practices:

(1) The performance of duty in this state of a commissioned dental or medical officer of the United States Army, Air Force, Navy, United States Department of Veterans Affairs, or Public Health Services;

(2) Clinical demonstrations before a society or convention of dentists or dental hygienists by a duly licensed dentist or dental hygienist of another state, territory, or the District of Columbia;

(3) Acts which would otherwise constitute the practice of dentistry or dental hygiene by students under the supervision of instructors in any dental college, university, hospital or institution, or dental department of any college, university, hospital or institution, or school of dental hygiene in this state which is recognized as being reputable by the American Dental Association Council on Dental Education and approved by the Arkansas State Board of Dental Examiners. These acts must be performed within the educational facility incident to a course of study or training and shall not be carried on for personal profit;

(4) Acts which would otherwise constitute the practice of dentistry by a graduate of a college of dentistry approved by the board who is engaged in an internship or residency program in a dental college, university, hospital or institution, or dental department of any college, university, hospital or institution in this state which is recognized as being reputable by the American Dental Association Council on Dental Education and approved by the board. These acts must be performed within the facility pursuant to the internship or residency program, and the intern or resident shall serve without fee or compensation other than that received in salary or other authorized allowances;

(5) Acts which would otherwise constitute the practice of dentistry by a graduate of a college of dentistry approved by the board who is engaged in teaching dentistry in a dental college, university, hospital or institution, or dental department of any college, university, hospital or institution in this state which is recognized as being reputable by the American Dental Association Council on Dental Education and approved by the board. These acts must be performed within the facility pursuant to the teaching appointment, and the person shall serve without fee or compensation other than that received in salary or other authorized allowances; or

(6)(A) The practice of dentistry or dental hygiene within the scope of the dentist's or dental hygienist's duties as an employee of the

Federal Bureau of Prisons, provided that the dentist or dental hygienist has obtained a license to practice from Arkansas or any other state, territory, the District of Columbia, or Canada.

(B) Dentists and dental hygienists authorized to practice under subdivision (6)(A) of this section may provide dental treatment or services only to inmates and shall not provide dental treatment or services to other employees of the Federal Bureau of Prisons or any other person.

History. Acts 1955, No. 14, § 34; 1973, No. 85, § 6; 1977, No. 258, § 6; A.S.A. 1947, § 72-567; Acts 2001, No. 301, § 1.

17-82-303. Examinations.

(a) The Arkansas State Board of Dental Examiners has exclusive jurisdiction to determine who shall be permitted to practice dentistry and dental hygiene in the State of Arkansas.

(b) To this end the board, at its regular annual meeting and at special meetings if it deems it necessary or expedient, shall conduct examinations, both written and clinical, of all qualified applicants who desire to practice dentistry or dental hygiene in the State of Arkansas.

(c) The Arkansas State Board of Dental Examiners is authorized and directed to conduct at least two (2) examinations annually, both written and clinical, of qualified applicants who desire to practice dentistry in the State of Arkansas. Special meetings for those purposes may be held by the board if it deems it necessary or expedient. The two (2) examinations to be held annually shall be scheduled in such a manner as to be conducted following the end of the fall and spring semesters of dental schools in order to accommodate, insofar as is practicable, the greater number of qualified applicants who wish to take examinations to practice dentistry in Arkansas shortly after completion of their regular dental schooling.

(d) The board may accept the results of the National Board of Dental Examiners examination if it so desires and may cooperate with dental schools in other states for the administration of the clinical examination or may cooperate with other states in the administration of a regional clinical examination.

(e)(1) The board shall determine what grade or percentage the applicant must make to entitle him or her to be licensed.

(2) The grade or percentage shall be the same at any one (1) examination for all applicants, but it shall never be lower than seventy-five percent (75%).

(f) The board may consider the conduct of the applicant during the examination as a factor in determining the grade or percentage to be given him or her.

History. Acts 1955, No. 14, § 19; 1973, No. 85, § 2; 1974 (1st Ex. Sess.), No. 64, § 2; A.S.A. 1947, §§ 72-552, 72-552.1.

17-82-304. Dentists generally — Licensing procedure.

(a)(1) A person not previously licensed to practice dentistry in the State of Arkansas who desires to do so shall apply in writing for examination to the Secretary of the Arkansas State Board of Dental Examiners and shall transmit with the written application his or her examination and licensing fee.

(2) The examination and licensing fee shall be determined by the board and shall be an amount reasonably calculated to cover the costs of administering the examination, issuing the license to practice, and otherwise administering this chapter.

(b) An applicant:

(1) Must:

(A) Be at least twenty-one (21) years of age and of good moral reputation and character;

(B) Submit upon request such proof as the board may require touching upon age, character, and fitness; and

(C) Have been graduated from an American Dental Association-accredited college of dentistry with the degree of Doctor of Dental Surgery or Doctor of Dental Medicine; or

(2) Must:

(A) Be at least twenty-one (21) years of age and of good moral reputation and character;

(B) Have graduated from a college of dentistry in North America with the degree of Doctor of Dental Surgery, Doctor of Dental Medicine, or an equivalent degree approved by the board;

(C) Have passed an examination approved by the board and authorized under § 17-82-303;

(D) Be a resident of the State of Arkansas and the United States and be in compliance with federal laws of immigration; and

(E) Serve a period of at least one (1) year under a provisional license issued by the board to foreign graduates and successfully complete the monitoring requirements as ordered by the board at the time the provisional license is issued.

(c)(1) If the board determines that the applicant is qualified to take the examination required for licensing, it shall notify the applicant of the time and place to report before it for examination.

(2) If a qualified applicant fails to appear for examination, the fee shall be retained by the board and the applicant shall be entitled to take any examination required for licensing held at any time within three (3) years thereafter, if he or she is then qualified, without additional fee charge unless the amount of the fee is increased by the board, in which event the applicant must pay the difference between the amount of fee credited to him or her and the increased fee amount.

(3) If an applicant fails to make the grade or percentage required by the board, the fee paid by him or her shall be retained by the board.

(4) If an applicant makes the grade or percentage required by the board, then it shall issue to him or her without further initial cost a license to practice dentistry in the State of Arkansas.

(d)(1) All licenses shall be numbered and issued consecutively.

(2) If a license is lost or destroyed, the secretary shall furnish a certified copy to the licensee upon the payment of a fee to be prescribed by the board. The fee shall be an amount reasonably calculated to cover the cost of furnishing the certified copy.

History. Acts 1955, No. 14, § 20; 1959, No. 4, § 1; 1969, No. 91, § 5; 1973, No. 85, § 3; 1977, No. 258, §§ 2, 3; 1981, No. 889, § 3; A.S.A. 1947, § 72-553; Acts 2003, No. 377, § 1; 2003, No. 661, § 1.

Publisher's Notes. Acts 2003, No. 661,

§ 2, provided: "This pilot program of licensure for foreign-trained graduates and the granting of licensure to foreign-trained dentists will expire at the close of the 2005 regular session of the Arkansas General Assembly."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Busi-

nesses, Criminal Background Checks, 26 U. Ark. Little Rock L. Rev. 451.

17-82-305. Dentists — Specialists — Licensing procedure.

(a)(1) Any dentist in this state licensed by the Arkansas State Board of Dental Examiners who has complied with requirements as specified by the American Dental Association Council on Dental Education in a specialty branch of dentistry or who has otherwise met the requirements of the rules and regulations promulgated by the board may apply for a certificate as a specialist.

(2) The application shall be accompanied by the payment of a fee to be prescribed by the board. The fee shall be an amount reasonably calculated to cover the cost of the examination and other costs incurred by the board in issuing the certificate.

(3) The application must be on file for at least sixty (60) days prior to the regular meeting of the board. If the application is accepted, the applicant shall be notified to appear for an examination as defined by the rules and regulations of the board.

(b) Examinations may be oral or written, or both, and the applicant may be required to demonstrate his or her knowledge and proficiency in the specialty in which he or she desires to be certified.

(c) The board is authorized to certify specialists in all specialty areas approved by the American Dental Association.

(d) Any dentist not licensed by the board but who is eligible to take the Arkansas State Board Examination and is further eligible for specialty examination may take both examinations at the discretion of the board.

(e) No licensed dentist shall hold himself or herself out to the public as a specialist or publicly announce as being specifically qualified in any particular branch of dentistry or publicly announce as giving special attention to any branch of dentistry until he or she has been issued a certificate by the board authorizing him or her to do so.

(f) Any dentist in this state licensed by the board who on February 21, 1969, is limiting his or her practice to a particular branch of

dentistry and who is holding himself or herself out to the public as a specialist in a particular branch of dentistry, upon application therefor to the board, shall be certified as a specialist in that branch of dentistry and shall not be required to take the examination provided for in subsection (b) of this section.

(g)(1) The issuing of a specialist license by the board is a special privilege granted to that member that allows him or her to announce to the public that he or she is especially qualified in a particular branch of dentistry.

(2) Any member granted this special privilege must limit his or her practice to the specialty in which he or she is licensed except in an emergency situation.

(3) The failure to limit his or her practice as provided in subdivision (g)(2) of this section described by the appropriate national specialty board shall be cause for the specialist license to be revoked or suspended.

History. Acts 1955, No. 14, § 20; 1959, § 3; A.S.A. 1947, § 72-553; Acts 1989, No. 4, § 1; 1969, No. 91, § 5; 1973, No. 85, § 365, § 1; 2003, No. 377, § 2. § 3; 1977, No. 258, §§ 2, 3; 1981, No. 889,

17-82-306. Dental hygienists — Licensing procedure.

(a)(1) A dental hygienist who desires to practice his or her profession in the State of Arkansas shall apply in writing for examination to the Secretary of the Arkansas State Board of Dental Examiners, and he or she shall transmit with the written application his or her examination and licensing fee.

(2) The examination and licensing fee shall be determined by the board and shall be an amount reasonably calculated to cover the costs of administering the examination, issuing the license to practice, and otherwise administering this chapter.

(b) An applicant must:

(1) Be of good moral reputation and character;

(2) Have graduated from a dental hygiene program which is accredited by the American Dental Association Commission on Dental Accreditation and approved by the board for the training of dental hygienists; and

(3) Submit upon request such proof as the board may require touching upon character and fitness.

(c)(1) If the board determines that the applicant is qualified to take the examination required for licensing, the board shall notify the applicant of the time and place to report before it for examination.

(2) If a qualified applicant fails to appear for examination, the fee shall be retained by the board and the applicant shall be entitled to take any examination required for licensing held at any time within three (3) years thereafter, if he or she is then qualified, without additional fee charge unless the amount of the fee is increased by the board, in which event the applicant must pay the difference between the amount of the fee credited to him or her and the increased fee amount.

(3) If an applicant fails to make the grade or percentage required by the board, the fee paid by him or her shall be retained by the board.

(4) If an applicant makes the grade or percentage required by the board, it shall issue to him or her without further initial cost a license to practice dental hygiene in the State of Arkansas.

(d)(1) All licenses shall be numbered and issued consecutively.

(2) If a license is lost or destroyed, the secretary shall furnish a certified copy to the licensee upon the payment of a fee to be prescribed by the board. The fee shall be an amount reasonably calculated to cover the cost of furnishing the certified copy.

History. Acts 1955, No. 14, § 21; 1959, 889, § 4; A.S.A. 1947, § 72-554; Acts No. 4, § 2; 1973, No. 85, § 4; 1981, No. 1995, No. 573, § 1; 2003, No. 377, § 3.

17-82-307. Applications — False information.

A person who, in order to induce favorable action by the Arkansas State Board of Dental Examiners on any application for a license to practice dentistry or dental hygiene in the State of Arkansas, makes any statement to the board, whether orally or in writing, which is false and at the time known by the person to be false or who submits or files as his or her own any diploma or license belonging or issued to another person or who in any other manner misrepresents or conceals his or her true name or former place of residence commits a Class D felony.

History. Acts 1955, No. 14, § 25; 1975, No. 928, § 21; A.S.A. 1947, § 72-558.

Publisher's Notes. Acts 1975, No. 928, § 2, provided that, notwithstanding that all or part of a statute defining a criminal offense is amended or repealed by this act, the provisions so amended or repealed shall remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to the effective date of this act.

17-82-308. Credentials — Persons licensed in other states.

(a) A dentist or dental hygienist who desires to practice his or her profession in the State of Arkansas and who has been practicing his or her profession continuously for a period of five (5) years or more next preceding the date of the application may apply in writing to the Arkansas State Board of Dental Examiners for a license to practice his or her profession in the State of Arkansas without undergoing the examination required for licensing provided for in §§ 17-82-304 — 17-82-306. The applicant must have been practicing by virtue of a license lawfully issued by the authority of another state, territory, the District of Columbia, or Canada, where the standard of proficiency at least equals that of the State of Arkansas.

(b) The application shall be accompanied by:

(1) A fee to be prescribed by the board which shall be an amount reasonably calculated to cover the costs of processing the application;

(2) The original or certified copy of the original license under which the applicant has been practicing his or her profession; or

(3) A certificate from the authority which issued the license, setting forth the applicant's moral reputation and character, history with the board, professional ability, and such other information or data as the board may deem necessary or expedient.

(c) Upon furnishing satisfactory proof of his or her fitness as contemplated in this section, the board in its discretion may issue a license to practice his or her profession to the applicant without further cost except as otherwise provided in this chapter for the renewal of licenses.

History. Acts 1955, No. 14, § 23; 1981, 1987, No. 499, § 1; 1993, No. 270, § 1; No. 889, § 6; A.S.A. 1947, § 72-556; Acts 2001, No. 439, § 3.

17-82-309. [Repealed.]

Publisher's Notes. This section, concerning the reciprocity of Arkansas licenses, was repealed by Acts 2001, No. 439, § 4. The section was derived from Acts 1955, No. 14, § 24; A.S.A. 1947, § 72-557. For present law, see § 17-82-308.

17-82-310. Annual renewal — Procedure.

(a) All licenses to practice dentistry or dental hygiene issued in the State of Arkansas shall continue in full force and effect until forfeited, suspended, or revoked, subject to the following provisions:

(1) On January 1 of even-numbered years, every dentist and dental hygienist must renew his or her license with the Arkansas State Board of Dental Examiners on forms prepared and furnished by the board, supplying all the information and data requested on the forms; and

(2) A renewal fee in an amount to be determined by the board as being necessary to provide funds for the operation of the board and for other expenses in administering this chapter must be paid to the board upon the filing of the form, duly executed, with the board.

(b) Upon the filing of the renewal form and payment of the fee, the board shall issue to the licensee its certificate of renewal that authorizes the licensee to practice his or her profession in the State of Arkansas until the next date of renewal.

(c)(1) During the month of December of odd-numbered years, the Secretary of the Arkansas State Board of Dental Examiners shall mail the approved renewal form to every dentist and dental hygienist registered in the State of Arkansas to his or her last known address.

(2) The failure of the dentist or dental hygienist to receive the form does not excuse his or her failure to renew.

(3) The providing of false or fraudulent information to renew the license is grounds for imposition of the penalties set forth at § 17-82-316.

History. Acts 1955, No. 14, § 22; 1959, § 72-555; Acts 1991, No. 592, § 1; 2001, No. 4, § 3; 1975, No. 369, § 1; 1977, No. 258, § 4; 1981, No. 889, § 5; A.S.A. 1947, No. 439, § 5; 2003, No. 377, §§ 4, 5.

17-82-311. Renewal — Penalties for noncompliance.

Failure to renew a license within a period of thirty (30) days after January 1 of even-numbered years shall result in forfeiture of the license.

History. Acts 1955, No. 14, § 22; 1959, § 72-555; Acts 2001, No. 439, § 6; 2003, No. 4, § 3; 1975, No. 369, § 1; 1977, No. No. 377, § 6.
258, § 4; 1981, No. 889, § 5; A.S.A. 1947,

17-82-312. Annual renewal — Relicensing.

(a) A dentist or dental hygienist whose license has been automatically forfeited pursuant to § 17-82-311 shall be relicensed at any time until January 1 of the year following the forfeiture by:

(1) Applying in writing to the Arkansas State Board of Dental Examiners;

(2) Paying all accrued renewal fees as established under § 17-82-310 and provided for in the regulations of the board, plus an additional penalty of two hundred dollars (\$200); and

(3) Furnishing such proof as the board may require that, in the period since January 1 of the year when his or her license ought first to have been effected, he or she has continuously conducted himself or herself in an ethical and proper fashion and complied with the regulations of the board and the provisions of the Arkansas Dental Practice Act, § 17-82-101 et seq.

(b) A dentist or dental hygienist who applies for relicensing, following forfeiture, after two (2) years from January 1 of the year when his or her license ought first to have been effected may be relicensed by:

(1) Complying with the requirements of subsection (a) of this section; and

(2)(A) Undergoing reexamination and passing the examination required by the regulations of the board.

(B) The reexamination shall consist of clinical skills only.

History. Acts 1955, No. 14, § 22; 1959, § 72-555; Acts 1999, No. 581, § 3; 2001, No. 4, § 3; 1975, No. 369, § 1; 1977, No. No. 439, § 7.
258, § 4; 1981, No. 889, § 5; A.S.A. 1947,

17-82-313. Renewal — Nonresidents.

(a)(1) A dentist or dental hygienist who has been licensed and who becomes a nonresident of the State of Arkansas may continue in effect his or her license to practice in the State of Arkansas by paying the renewal fee required of resident dentists and dental hygienists.

(2) Before resuming the practice of his or her profession in the State of Arkansas, the dentist or dental hygienist shall:

(A) First furnish satisfactory proof to the Arkansas State Board of Dental Examiners that he or she has continuously practiced dentistry or dental hygiene since leaving the State of Arkansas and has

at all times conducted himself or herself in an ethical and proper fashion; and

(B) Pass such examinations and provide such evidence and information as the board may require as delineated in its rules and regulations.

(3) Upon the furnishing of such proof to the board, the board shall cause to be issued to the applicant the authority to resume his or her practice in the State of Arkansas.

(b) A dentist or dental hygienist who has been licensed and who becomes a nonresident of the State of Arkansas and who fails to pay the registration fee required of resident dentists or dental hygienists as permitted by this section shall be entitled to resume practice in the State of Arkansas by complying with the requirements of § 17-82-312.

History. Acts 1955, No. 14, § 22; A.S.A. 1947, § 72-555; Acts 1999, No. 581, §§ 1, 2; 2001, No. 439, § 8; 2003, No. 377, § 7.

17-82-314. Failure to practice.

(a) All licenses issued to dentists and dental hygienists are automatically forfeited if the licensee ceases to practice his or her profession either in the State of Arkansas or elsewhere for a period of two (2) years.

(b) The licensee is not entitled to resume the practice of his or her profession in the State of Arkansas until he or she is reexamined and licensed by the Arkansas State Board of Dental Examiners. However, the examination shall consist only of clinical work.

(c) A dentist or dental hygienist who resumes the practice of his or her profession in the State of Arkansas after having ceased to practice for a period of two (2) years without reexamination and relicensing is subject to the penalties and liabilities prescribed in § 17-82-301(b) and (c).

History. Acts 1955, No. 14, § 22; 1977, No. 258, § 4; A.S.A. 1947, § 72-555.

17-82-315. [Repealed.]

Publisher's Notes. This section, concerning the annual renewal of licenses for retirees, was repealed by Acts 2001, No. 439, § 9. The section was derived from Acts 1979, No. 805, § 1; A.S.A. 1947, § 72-555.1.

17-82-316. Revocation or suspension — Grounds — Effect.

(a) The Arkansas State Board of Dental Examiners is vested with the power to revoke or suspend for any period of time the privilege of practicing under any license issued in the State of Arkansas to any dentist, dental hygienist, or dental assistant possessing an expanded duties permit if the board finds that the licensee or permit holder has violated the Arkansas Dental Practice Act, § 17-82-101 et seq., the regulations of the board, or a previous order of the board.

(b) In addition to suspending or revoking a license or permit, the board may:

(1) Place a licensee on probation for a period not exceeding eighteen (18) months per violation under terms and conditions determined by the board to be in the best interest of the licensee and the people of the State of Arkansas;

(2) Impose a fine not to exceed one thousand dollars (\$1,000) per violation; or

(3) Require a licensee or permit holder to reimburse the board for its costs in conducting the investigation and hearing.

(c) The board may impose one (1) or more of the penalties set out in subsection (b) of this section if the board finds that the licensed dentist, dental hygienist, or permit holder has violated the Arkansas Dental Practice Act, § 17-82-101 et seq., or the regulations of the board, or has committed one (1) or more of the following acts:

(1) The presentation to or filing with the board, for the purpose of securing a license to practice dentistry or dental hygiene or to obtain any permit issued by the board, of any diploma, license, or certificate illegally or fraudulently obtained by the applicant;

(2) The use of an assumed or fictitious name in applying for a license for the purpose of shielding moral unfitness or a criminal record;

(3) The commission of any criminal operation; habitual drunkenness for a period of three (3) months; insanity; adjudication of insanity or mental incompetency if deemed detrimental to patients; conviction of an infamous crime or felony; addiction to narcotics; immoral, dishonorable, or scandalous conduct; professional incompetency; failure to maintain proper standards of sanitation or failure otherwise to maintain adequate safeguards for the health and safety of patients; or employment in the practice of the profession of any drug, nostrum, unknown formula, or dangerous or unknown anesthetic not generally used by the dental profession;

(4) The advertising of services to the public which is fraudulent and misleading or which does not comply with the rules and regulations of the board;

(5) The permitting of any unlicensed person under his or her supervision or control to perform any act, service, practice, or operation on any patient or prospective patient which constitutes a part of the practice of dentistry or dental hygiene or is involved with the administration of drugs, medicines, or anesthetics, except those services permitted by the board and under the supervision of a licensed dentist;

(6) The violation of any rule or regulation of board standards of professional conduct for dentists and dental hygienists practicing within the state;

(7) The violation of any term of probation or order previously entered by the board affecting the licensee or permit holder; or

(8) Having been found in violation of a statute or a rule or regulation governing the practice of dentistry or dental hygiene by the dental licensing authority or agency or another state.

(d) The board may revoke the license of a dentist who permits a dental hygienist or dental assistant under his or her supervision to perform any of the acts, services, or practices which are prohibited by this chapter. The board also may revoke the license of the offending dental hygienist or the permit of the dental assistant.

(e) No license revoked by the board shall ever be renewed.

(f) No license which has been suspended by the board shall be reinstated until the offender has:

(1) Given satisfactory assurance of future correct conduct; and

(2) Paid a fee of fifty dollars (\$50.00) to the board.

(g) A license may be suspended or revoked if during the term of his or her probation the licensee shall violate any of the terms of his or her probation as set forth by the board.

(h) Any fine imposed on a licensee shall be paid to the board prior to the resumption of the practice of dentistry or dental hygiene by the licensee.

(i) A dentist or dental hygienist who resumes his or her practice after the revocation of his or her license is subject to the penalties and liabilities prescribed in § 17-82-301(b) and (c).

History. Acts 1955, No. 14, §§ 17, 27; 1973, No. 85, § 5; 1983, No. 778, § 1; A.S.A. 1947, §§ 72-550, 72-560; Acts 1987, No. 498, § 1; 2001, No. 439, § 10; 2007, No. 123, § 1.

Amendments. The 2007 amendment

added (c)(8), and made related and minor stylistic changes.

Cross References. Violation of Narcotic Drug Act, notice to board, revocation of license, § 20-64-215.

CASE NOTES

ANALYSIS

Constitutionality.

In General.

Advertising.

Evidence.

Constitutionality.

Language allowing disciplinary action for the commission of "immoral, dishonorable or scandalous conduct" is not unconstitutionally vague. *Baxter v. Arkansas State Bd. of Dental Exmrs.*, 269 Ark. 67, 598 S.W.2d 412 (1980).

In General.

While the legislature may declare grounds for revocation of license to practice dentistry and may vest revocation authority in a board, the statute should specifically designate the offenses which constitute cause for revocation. *Green v. Blanchard*, 138 Ark. 137, 211 S.W. 375 (1919) (decision under prior law).

Advertising.

A dentist who advertised that he had absolutely minimized pain from dental work was not liable to have his license revoked as having advertised to practice dentistry without causing pain. *Green v. Blanchard*, 138 Ark. 137, 211 S.W. 375 (1919) (decision under prior law).

Evidence.

The results of a polygraph examination would not be the type of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs; thus there was no error in excluding the results from the record of a Board of Dental Examiners' hearing. *Baxter v. Arkansas State Bd. of Dental Exmrs.*, 269 Ark. 67, 598 S.W.2d 412 (1980).

Cited: *Holifield v. Arkansas ABC Bd.*, 273 Ark. 305, 619 S.W.2d 621 (1981); *Hinsley v. Arkansas State Bd. of Dental Exmrs.*, 276 Ark. 243, 633 S.W.2d 696 (1982).

17-82-317. Revocation or suspension — Procedure.

(a)(1) If the Arkansas State Board of Dental Examiners or any other person has reason to believe that any license issued to a dentist or dental hygienist or a permit to perform expanded duties issued to a dental assistant should be suspended or revoked because of the existence of some cause provided for in this chapter, the board or such other person shall file with the Secretary of the Arkansas State Board of Dental Examiners written charges against the holder thereof specifically setting forth the offense complained of.

(2) The charges filed with the secretary will become the basis for a disciplinary hearing upon the finding by a majority vote of the board that sufficient cause exists to conduct the disciplinary hearing.

(b)(1) A copy of the charges shall forthwith be delivered to the accused in person or by registered mail at his or her last known address, either of which constitutes sufficient notice to justify proceeding with a hearing of the charges against the accused.

(2) Accompanying the copy of the charges shall be a notice to the accused of the hour, day, and place of hearing of the charges and a notice to the accused to be present, if he or she so desires, to defend the action.

(c) The accused may be represented by counsel at the hearing and at the taking of all testimony relative to the action.

(d) The secretary is empowered to administer oaths to all persons testifying at any such hearing.

(e) The accused must be allowed at least twenty (20) days from the date of the notice of hearing before being required to defend the action.

(f) After considering the testimony adduced at the hearing, the board shall cause to be entered upon its minute book its findings and the action taken.

(g) If the license of the accused is suspended or revoked, it is further the duty of the board to enter its action on its registration record.

History. Acts 1955, No. 14, § 28; A.S.A. 1947, § 72-561; Acts 1989, No. 364, § 1.

Publisher's Notes. This section may be affected by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

SUBCHAPTER 4 — LICENSING OF CERTAIN DENTAL ASSISTANTS

SECTION.

17-82-401. Legislative intent.

17-82-402. Penalties.

17-82-403. Permit required.

SECTION.

17-82-404. Applications — Issuance.

17-82-405. Annual registration.

17-82-406. Rules and regulations.

Effective Dates. Acts 1985, No. 473, § 7: Mar. 21, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that existing laws regulating the practice of dentistry do not provide for the regulating of dental assistants who perform expanded duties, such as the monitoring of anesthetics to patients, and radiology; that provisions by the Arkansas State Board of Dental Examiners to issue a permit to dental assistants who perform

expanded duties are necessary to insure proper enforcement of educational and safety standards for the benefit of the public; that there is an emergency need for such provision; and that the enactment of this measure will relieve this dangerous

situation. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety should take effect and be in force from the date of its approval."

17-82-401. Legislative intent.

The provisions of this subchapter are intended to be supplemental and in addition to subchapters 1-3 of this chapter and are intended to authorize the Arkansas State Board of Dental Examiners to issue permits to dental assistants who perform expanded duties as provided in this subchapter.

History. Acts 1985, No. 473, § 1; A.S.A. 1947, § 72-571.

17-82-402. Penalties.

Any person who violates the provisions of § 17-82-403 or any dentist who permits a person to violate the provisions of § 17-82-403 shall be subject to the penalties and sanctions as set forth in §§ 17-82-301(b) and (c) and 17-82-316.

History. Acts 1985, No. 473, § 3; A.S.A. 1947, § 72-573.

17-82-403. Permit required.

No person shall perform the expanded duties of a dental assistant as defined by the Arkansas State Board of Dental Examiners in the rules and regulations of the board without a permit.

History. Acts 1985, No. 473, § 2; A.S.A. 1947, § 72-572.

17-82-404. Applications — Issuance.

(a) A dental assistant who desires to perform expanded duties as defined by the rules and regulations of the Arkansas State Board of Dental Examiners in the State of Arkansas shall apply in writing for examination to the Secretary of the Arkansas State Board of Dental Examiners, and he or she shall transmit with the written application his or her examination and licensing fee.

(b) The examination and licensing fee shall be determined by the board and shall be an amount reasonably calculated to cover the costs of administering the examination, issuing the license to practice, and otherwise administering this subchapter.

(c) An applicant must be of good moral reputation and character and a graduate of a school or course of study approved by the board for the training of dental assistants.

(d) An applicant must submit upon request such proof as the board may require touching upon character and fitness.

(e)(1) If after considering an application and its accompanying records the board finds that the applicant is not qualified to take the examination, the board shall refund the entire amount of the examination and licensing fee paid by the applicant.

(2) If a qualified applicant fails to appear for examination, the fee shall be retained by the board.

(3) If an applicant fails to make the grade or percentage required by the board, the fee paid by him or her shall be retained by the board.

(f) If an applicant makes the grade or percentage required by the board, it shall issue to him or her without further initial cost a permit to perform the expanded duties of a dental assistant in the State of Arkansas.

(g) All permits shall be numbered and issued consecutively.

(h) If a permit is lost or destroyed, the secretary shall furnish a certified copy of the permit to the permittee upon the payment of a fee to be prescribed by the board, and the fee shall be in an amount reasonably calculated to cover the cost of furnishing the certified copy.

History. Acts 1985, No. 473, § 4; A.S.A. 1947, § 72-574.

17-82-405. Annual registration.

(a)(1) For dental assistants who perform expanded duties, all permits issued by the Arkansas State Board of Dental Examiners shall continue in full force and effect until forfeited, suspended, or revoked.

(2) However, on January 1 of odd-numbered years every dental assistant must register his or her permit with the board on forms prepared and furnished by the board.

(b) A registration fee of not more than sixty dollars (\$60.00) to be fixed by the board must be paid to the board upon the filing of the form duly executed with the board.

(c) The procedures for registration and penalties for failure to register permits of dentists as stated in §§ 17-82-310 — 17-82-314 will apply to the registration of permits by dental assistants.

History. Acts 1985, No. 473, § 5; A.S.A. 1947, § 72-575; Acts 2003, No. 377, § 8.

17-82-406. Rules and regulations.

All laws pertaining to dentists and dental hygienists as stated in subchapters 1-3 of this chapter and the rules and regulations of the Arkansas State Board of Dental Examiners will apply to dental assistants who perform expanded duties.

History. Acts 1985, No. 473, § 6; A.S.A. 1947, § 72-576.

SUBCHAPTER 5 — ANESTHETICS AND SEDATIVES

SECTION.

17-82-501. Provisions supplemental.

17-82-502. Permit to administer.

17-82-503. Application for permit.

SECTION.

17-82-504. Issuance of permits — Renewal.

Effective Dates. Acts 1987, No. 584, § 4: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws regulating the practice of dentistry do not provide for the permitting of a dentist to administer to a patient general anesthesia, IV sedation, or conscious sedation utilizing nitrous oxide; that provision for the Arkansas State Board of Dental Examiners to regulate the dentists who administer general anesthesia, IV

sedation, or conscious sedation utilizing nitrous oxide is necessary for the health and safety of the general public; that there is an emergency need for such provision, and that enactment of this measure will remedy this dangerous situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-82-501. Provisions supplemental.

The provisions of this subchapter shall be supplemental to the provisions of § 17-82-101 et seq. and other acts supplemental thereto and shall repeal only such laws as are in direct conflict with this subchapter.

History. Acts 1987, No. 584, § 3.

17-82-502. Permit to administer.

A dentist receiving a permit to administer general anesthesia or sedation may administer it in compliance with the rules and regulations of the Arkansas State Board of Dental Examiners.

History. Acts 1987, No. 584, § 1; 1997, No. 128, § 1.

17-82-503. Application for permit.

(a) Any dentist who desires to administer to a patient general anesthesia or sedation as defined by the rules and regulations of the Arkansas State Board of Dental Examiners and the State of Arkansas shall apply in writing for a permit from the board, shall submit to an on-site inspection by the board, as defined and described in the rules and regulations of the board, and shall transmit with the application a fee reasonably calculated by the board to cover the costs and expenses

of administering the on-site inspection and otherwise administering this subchapter.

(b) The application shall request such information as the board may require as stated in its rules and regulations.

History. Acts 1987, No. 584, § 1; 1997, of nitrous oxide for use as an intoxicant No. 128, § 2. prohibited, § 5-64-1201 et seq.

Cross References. Sale or possession

17-82-504. Issuance of permits — Renewal.

(a) All permits issued by the Arkansas State Board of Dental Examiners to dentists who administer general anesthesia or sedation shall continue in full force and effect until forfeited, suspended, or revoked.

(b) At the same time each year a dentist renews his or her license to practice dentistry, a dentist must renew his or her permit to administer general anesthesia and sedation with the board on forms prepared and furnished by the board.

(c) A renewal fee calculated by the board to cover the costs of any on-site inspection and for otherwise administering this subchapter must accompany the form.

(d) Failure to renew a permit will terminate the authority of a dentist to administer general anesthesia or sedation.

History. Acts 1987, No. 584, § 2; 1997, No. 128, § 3.

SUBCHAPTER 6 — MOBILE DENTAL FACILITIES

SECTION.

- 17-82-601. Definitions.
- 17-82-602. Permit requirement.
- 17-82-603. Requirements for operators.
- 17-82-604. Physical requirements for facilities.
- 17-82-605. Notification of changes.
- 17-82-606. Sale of a mobile dental facility — Notification requirements.

SECTION.

- 17-82-607. Cessation of operation of a mobile dental facility — Notification requirements.
- 17-82-608. Applicability.
- 17-82-609. Penalties.
- 17-82-610. Rules.

17-82-601. Definitions.

As used in this subchapter:

(1) “Dental home” means a licensed primary dental care provider who has an ongoing relationship with a patient, including without limitation:

- (A) Comprehensive oral health care that is continuously accessible;
- (B) Coordinated;
- (C) Family-centered; and

(D) Provided in compliance with policies of the American Dental Association beginning not later than one (1) year of age;

(2) "Mobile dental facility" means a self-contained, intact facility in which dentistry and dental hygiene are practiced and that may be moved, towed, or transported from one (1) location to another; and

(3) "Operator" means an individual licensed to practice dentistry in this state.

History. Acts 2009, No. 414, § 1.

17-82-602. Permit requirement.

(a)(1) Before an operator operates a mobile dental facility, the Arkansas State Board of Dental Examiners shall issue a permit to the operator to operate a mobile dental facility.

(2) An operator shall submit an application for a mobile dental facility permit to the board in the form and manner required by the board along with a payment of five thousand dollars (\$5,000).

(3) Before issuing a permit to operate a mobile dental facility, the board shall determine that an operator meets all qualifications under this subchapter and rules of the board.

(b) The initial application for a mobile dental facility permit shall include without limitation:

(1) The full name, address, and telephone number of each dentist and dental hygienist who will work in a mobile dental facility;

(2)(A) Proof of insurance from a licensed insurance carrier that the operator has in force at least one million dollars (\$1,000,000) of general liability insurance.

(B) An operator shall maintain the insurance coverage required under subdivision (b)(2)(A) of this section at all times during which the operator holds a mobile dental facility permit issued by the board;

(3) The address and official telephone number of record of the operator; and

(4) The written procedure required under § 17-82-603(f).

History. Acts 2009, No. 414, § 1.

17-82-603. Requirements for operators.

(a) An operator shall maintain an official business address that shall:

(1) Not be a post office box;

(2) Be within this state; and

(3) Be associated with an established, nonmobile dental facility that shall have an official business address on record with the Arkansas State Board of Dental Examiners.

(b) An operator shall maintain an official telephone number of record that shall:

(1) Be accessible twenty-four (24) hours per day;

(2) Be filed with the board as part of the application for a permit; and

(3) Have 911 capability.

(c) An operator shall notify the board within thirty (30) days of:

(1) A change in address, location, or telephone number of record; and

(2)(A) The method by which the operator shall notify a patient of the change of address, location, or telephone number of record.

(B) As used in subdivision (c)(2)(A) of this section, "patient" means an individual who has received treatment or consultation of any kind within two (2) years before the date of the change of address, location, or telephone number of record under this section.

(d) All written or printed documents available from or issued by the mobile dental facility shall contain the official business address and telephone number of record for the mobile dental facility.

(e) When the mobile dental facility is not in transit, all dental and official records of the mobile dental facility shall be maintained at the official business address.

(f)(1)(A) An operator shall maintain a written procedure for emergency follow-up care for patients treated in a mobile dental facility.

(B) The written procedure required under subdivision (f)(1)(A) of this section shall state that the operator shall make arrangements to provide follow-up treatment in a dental facility that is permanently established in the area within a fifty-mile radius of the location where services are provided by the operator if a qualified dentist is located in the area and agrees to provide follow-up care.

(2) An operator that is unable to identify a qualified dentist in the area or is unable to arrange for emergency follow-up care for patients otherwise shall provide the necessary follow-up care through the mobile dental facility or at the operator's established dental practice location in this state or at any other established dental practice in this state that agrees to accept the patient.

(3)(A) An operator who fails to arrange or provide follow-up care as required under this subsection has abandoned the patient.

(B) If an operator abandons a patient, the operator and any dentist or dental hygienist who fails to provide the required follow-up treatment is subject to disciplinary action by the board.

(g)(1) A mobile dental facility shall have communication facilities that enable the operator to contact necessary parties if a medical or dental emergency occurs.

(2) The communication facilities shall enable:

(A) The patient or the parent or guardian of the patient treated to contact the operator for emergency care, follow-up care, or information about treatment received; and

(B) The provider who renders follow-up care to contact the operator and receive treatment information, including without limitation radiographs.

(h) A mobile dental facility and the dental procedures performed by a qualified dentist who is located in the area and agrees to provide follow-up care shall comply with all applicable federal and state laws and all applicable rules of the board.

(i) Services may be provided in a mobile dental facility only when a licensed dentist is physically present in the facility.

(j)(1) A driver of a mobile dental facility shall possess a valid Arkansas driver's license appropriate for the operation of the vehicle.

(2) A copy of the driver's license of each driver of a mobile dental facility shall be submitted to the board at least thirty (30) days before the individual operates a mobile dental facility.

(k) A mobile dental facility shall possess the appropriate motor vehicle registration of this state.

(l)(1) The operator of a mobile dental facility shall not perform services on a minor without the signed informed consent of a parent or guardian.

(2)(A) The board shall establish the signed informed consent form required under this subsection.

(B) The signed informed consent form shall:

(i) Inquire whether the prospective minor patient received dental care from a licensed dentist during the previous year; and

(ii) If the dental care was from a mobile dental facility, request the name, address, and telephone number of the dental home.

(3)(A) If the signed informed consent form provided to the operator identifies a dental home, the operator shall contact the designated dental home by phone, facsimile, or electronic mail to notify the dental home of the minor's interest in receiving dental care from the operator.

(B) If the dental home confirms that an appointment for the minor is scheduled with the dental home, the operator shall encourage the minor or his or her parent or guardian to seek care from the dental home.

(4) The signed informed consent form shall document that the parent or legal guardian understands that the prospective patient may choose at any time to receive care from the prospective patient's dental home rather than from the mobile dental facility.

(m)(1) An operator of a mobile dental facility shall not perform services on an adult without a signed informed consent form from the prospective patient on a form established by the board.

(2) The signed informed consent form shall document that the patient understands that the patient may choose at any time to receive care from his or her dental home rather than from the mobile dental facility.

(n)(1)(A) An operator of a mobile dental facility shall not perform services on an incapacitated person without a signed informed consent form from the legal guardian of the incapacitated person on a form established by the board.

(B) The signed informed consent form shall document that the patient's legal guardian understands.

(2) The signed informed consent form shall document that the guardian understands that the patient may choose at any time to receive care from his or her dental home rather than from the mobile dental facility.

(o)(1) An operator of a mobile dental facility shall maintain a written or electronic record detailing for each location where services are performed:

- (A) The street address of the service location;
- (B) The date of each session;
- (C) The number of patients served;
- (D) The types of dental services provided and the quantity of each service provided; and
- (E) Any other information required by the board.

(2) On request, the written or electronic record shall be made available to the board within ten (10) days.

(p) A mobile dental facility shall possess all applicable county and city licenses or permits to operate at each location.

(q) A mobile dental facility shall comply with the current recommendations for infection-control practices for dentistry promulgated by the Centers for Disease Control and Prevention, as they existed on January 1, 2009, and any rule of the board relating to infection control or reporting in a dental office.

(r)(1)(A) At the conclusion of each patient's visit to a mobile dental facility, the operator shall provide the patient with a patient information sheet.

(B) The operator shall also provide the information sheet provided under subdivision (r)(1)(A) of this section to an individual or entity authorized by the patient to receive or access the patient's records.

(2) The information sheet required under subdivision (r)(1)(A) shall include without limitation:

(A) The name of the dentist or dental hygienist, or both, who performed the services;

(B) A description of the treatment rendered, including without limitation:

(i) Billing service codes and fees associated with treatment; and

(ii) Tooth numbers, when appropriate;

(C) If applicable, the name, address, and telephone number of any dentist to whom the patient was referred for follow-up care and the reason for the referral; and

(D) If applicable, the name, address, and telephone number of a parent or guardian of the patient.

History. Acts 2009, No. 414, § 1.

17-82-604. Physical requirements for facilities.

(a) A mobile dental facility shall comply with the following physical requirements and inspection criteria:

(1) Ready access by a ramp or lift;

(2) A properly functioning sterilization system;

(3) Ready access to an adequate supply of potable water, including hot water;

(4) A covered galvanized, stainless steel, or other noncorrosive container for the deposit of refuse and waste materials; and

(5) Ready access to toilet facilities.

(b) A mobile dental facility shall be inspected by the Arkansas State Board of Dental Examiners or its representative before receiving a permit.

(c) The board may perform periodic unannounced audits and inspections on a permitted mobile dental facility.

History. Acts 2009, No. 414, § 1.

17-82-605. Notification of changes.

(a) An operator shall notify the Arkansas State Board of Dental Examiners in writing within fifteen (15) days after a change in the employment of a dentist or dental hygienist working for the operator.

(b) An operator shall notify the board in writing within ten (10) days after a change relating to a dentist to whom patients are to be referred for follow-up care under § 17-82-603(f).

(c) An operator shall notify the board in writing within ten (10) days of a change in the procedure for emergency follow-up care under § 17-82-603(f).

History. Acts 2009, No. 414, § 1.

17-82-606. Sale of a mobile dental facility — Notification requirements.

If a mobile dental facility is sold, the current operator shall inform the Arkansas State Board of Dental Examiners by certified mail within ten (10) days after the date the sale is finalized.

History. Acts 2009, No. 414, § 1.

17-82-607. Cessation of operation of a mobile dental facility — Notification requirements.

(a) An operator of a mobile dental facility shall notify the Arkansas State Board of Dental Examiners at least thirty (30) days before cessation of operation.

(b)(1) The notification required under this section shall include without limitation:

(A) The final day of operation of the mobile dental facility; and

(B) A description of the manner and procedure by which patients may obtain their records or transfer the records to another dentist.

(2) A copy of the notification shall be sent to all patients.

(3) The operator shall take all necessary action to ensure that the patient records are available to the patient, a representative of the patient, or a subsequent treating dentist.

(c) As used in this section, “patient” means an individual who has received treatment or consultation within two (2) years of the last date of operation of the mobile dental facility by the current operator.

History. Acts 2009, No. 414, § 1.

17-82-608. Applicability.

An operator, dentist, or dental hygienist working or performing services at a mobile dental facility is subject to this chapter.

History. Acts 2009, No. 414, § 1.

17-82-609. Penalties.

(a) An operator, dentist, or dental hygienist who violates this subchapter is subject to § 17-82-316.

(b) The Arkansas State Board of Dental Examiners shall employ procedures under § 17-82-317 in assessing penalties under this section.

History. Acts 2009, No. 414, § 1.

17-82-610. Rules.

(a) The Arkansas State Board of Dental Examiners shall adopt rules to implement and enforce this subchapter.

(b) The rules adopted under this subchapter shall specify that a dental hygienist or a dental assistant shall not be an operator under this subchapter.

History. Acts 2009, No. 414, § 1.

CHAPTER 83

DIETITIANS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS DIETETICS LICENSING BOARD.
3. LICENSING.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-100-101 et seq.

RESEARCH REFERENCES

ALR. Hospital's liability for injury allegedly caused by improper diet or feeding of patient. 42 A.L.R.3d 736.

Malpractice by administering or prescribing drugs for weight control. 1 A.L.R.4th 236.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-83-101. Short title.

17-83-102. Purpose.

17-83-103. Definitions.

SECTION.

17-83-104. Exemptions.

17-83-105. Violations of chapter.

17-83-106. Penalties — Enforcement.

17-83-101. Short title.

This chapter shall be known and may be cited as the “Dietetics Practice Act”.

History. Acts 1989, No. 392, § 1.

17-83-102. Purpose.

(a) It is the purpose of this chapter to protect the health, safety, and welfare of the public by providing for the licensing and regulation of persons engaged in the practice of dietetics.

(b) Nothing in this chapter shall prevent the furnishing of general nutritional information on food, food materials, or dietary supplements or the explanation to customers about foods or food products in connection with the sale, marketing, and distribution of those products.

History. Acts 1989, No. 392, § 2.

17-83-103. Definitions.

As used in this chapter:

(1) “Association” means the American Dietetic Association;

(2) “Board” means the Arkansas Dietetics Licensing Board;

(3) “Commission on Dietetic Registration” means the Commission on Dietetic Registration that is a national certifying agency for voluntary professional credentialing in dietetics and a member of the National Commission for Health Certifying Agencies;

(4) “Degree” means a degree received from a United States college or university that was regionally accredited at the time the degree was conferred;

(5) “Dietetic technician” means one who has completed a dietetic technician program and has received a two-year associate degree from a regionally accredited college or university;

(6) “Dietetics practice” means the integration and application of the principles derived from the sciences of nutrition, biochemistry, food, physiology, management, and behavioral and social sciences to achieve and maintain people’s health through the provision of nutrition care services;

(7) “Dietitian” means one engaged in dietetics practice;

(8) “Licensed dietitian” means a person licensed under this chapter;

(9) “National Commission for Health Certifying Agencies” means the national organization that establishes national standards for certifying bodies that attest to the competence of individuals who participate in

the health care delivery system, grants recognition to certifying bodies that voluntarily apply and meet the established standards, and monitors the adherence to those standards by the certifying bodies that it has recognized;

(10) "Nutrition care services" means:

(A) Assessing the nutritional needs of individuals and groups of humans and determining resources and constraints in the practice setting;

(B) Establishing priorities, goals, and objectives that meet nutritional needs of humans and are consistent with available resources and constraints;

(C) Providing nutrition counseling to humans in health and disease;

(D) Developing, implementing, and managing nutrition care of, and food service systems for, humans; and

(E) Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services for humans;

(11) "Nutrition counseling" means advising and assisting individuals or groups concerning appropriate nutritional intake by integrating information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status;

(12) "Nutritional assessment" means the evaluation of the nutritional needs of individuals and groups, based upon appropriate biochemical, anthropometric, physical, and dietary data, to determine nutrient needs and recommend appropriate nutritional intervention, including enteral and parenteral nutrition;

(13) "Provisionally licensed dietitian" means a person provisionally licensed under this chapter; and

(14) "Registered dietitian" means a person registered by the Commission on Dietetic Registration.

History. Acts 1989, No. 392, § 3.

17-83-104. Exemptions.

This chapter shall not be construed to affect or prevent:

(1) Dietetics students who engage in clinical practice under the supervision of a dietitian as part of a dietetic education program approved or accredited by the American Dietetic Association and approved by the Arkansas Dietetics Licensing Board;

(2) A dietitian who is serving in the armed forces or the United States Public Health Service or is employed by the United States Department of Veterans Affairs from engaging in the practice of dietetics, provided that the practice is related to that service or employment;

(3) A cooperative extension home economist from performing nutrition tasks incidental to the practice of his or her profession, provided

that the person does not hold himself or herself out under the title of dietitian or licensed dietitian;

(4) A duly licensed physician, pharmacist, or nurse from engaging in the practice of dietetics when incidental to the practice of his or her profession, provided that the person does not hold himself or herself out under the title of dietitian or licensed dietitian;

(5) Any person employed by, supervised by, under the guidance of, or in consultation with a licensed dietitian, such as a dietetic technician, home economist, dietary manager, or food service supervisor, from performing nutrition tasks in the practice of his or her profession, provided that the person does not hold himself or herself out under the title of dietitian or licensed dietitian;

(6) Any person who has received a doctoral degree from a regionally accredited United States college or university in or with a concentration in human nutrition, food and nutrition, dietetics, public health nutrition, or food systems management;

(7) A nonresident dietitian practicing dietetics in this state, if:

(A) The dietetics are performed for no more than one hundred eighty (180) consecutive working days; and

(B) The dietitian:

(i) Is licensed under the laws of another state which has licensure requirements at least as stringent as the requirements of this chapter, as determined by the board; or

(ii) Has met qualifications as specified in this chapter for the practice of dietetics;

(8) Any person who offers weight control programs prepared under the supervision of or approved by a registered dietitian or a licensed dietitian who is licensed under the laws of this state or another state which has licensure requirements at least as stringent as the requirements of this chapter, as determined by the board, provided that the person does not hold himself or herself out under the title of dietitian or licensed dietitian;

(9) Any person employed by a hospital or long-term care facility licensed by the Department of Health or the Department of Human Services and operating under the rules and regulations of the agencies shall be exempt from this chapter, provided that the person's practice of dietetics is related to the employment;

(10) Any person employed by a facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination, provided that the person's practice of dietetics is related to the employment;

(11) Any person who has received a doctoral degree from a regionally accredited United States college or university in or with a concentration in animal nutrition and whose practice is related to the degree;

(12) Any health care professional or nutritionist from engaging in dietetics practice without a license under this chapter; or

(13) The sale of vitamins, over-the-counter health care products, or food supplements by persons who are not licensed under this chapter,

nor shall this chapter prevent nutritionists from advising customers in regard to those products.

History. Acts 1989, No. 392, § 4.

17-83-105. Violations of chapter.

The following acts shall constitute violations of this chapter:

(1) Representing oneself to be a dietitian or licensed dietitian, using the words “dietitian” or “provisional licensed dietitian” alone or in combination, or using the initials, “L.D.” or “P.L.D.” or any other letters, words, abbreviations, or insignia indicating that he or she is a dietitian, unless he or she is duly licensed as such under this chapter;

(2) Practicing or attempting to practice dietetics without having first been licensed or otherwise permitted under this chapter;

(3) Obtaining or attempting to obtain a license or renewal of a license by bribery or fraudulent representation; and

(4) Knowingly making a false statement on any form promulgated under this chapter or the rules and regulations promulgated under this chapter.

History. Acts 1989, No. 392, § 14; 1991, No. 786, § 26.

Publisher’s Notes. Acts 1991, No. 786, § 37, provided, “The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All

such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987.”

17-83-106. Penalties — Enforcement.

(a) Violations of this chapter shall constitute Class A misdemeanors.

(b)(1) The Arkansas Dietetics Licensing Board shall assist the prosecuting attorney in the enforcement of this chapter.

(2) Any member of the board may present evidence of a violation to the appropriate prosecuting attorney.

History. Acts 1989, No. 392, § 17.

SUBCHAPTER 2 — ARKANSAS DIETETICS LICENSING BOARD

SECTION.

17-83-201. Creation — Members.

17-83-202. Organization and meetings —
Personnel.

SECTION.

17-83-203. Duties and powers — Fees —
Continuing education.

17-83-204. Funds.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for

all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act

1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved

nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-83-201. Creation — Members.

(a) There is hereby created the Arkansas Dietetics Licensing Board, to commence operations on January 1, 1990.

(b) The board shall consist of seven (7) persons, all of whom are Arkansas residents, with the following qualifications:

(1) Four (4) board members who are licensed dietitians; and

(2) Three (3) board members who are representatives of the public at large.

(c) The members of the board shall be appointed by the Governor with the consent of the Senate and shall serve staggered terms of five (5) years each, beginning January 15 of odd-numbered years.

(d)(1) The four (4) board members who are representative of the dietetics profession shall be selected from a list of ten (10) names submitted to the Governor by the Board of Directors of the Arkansas Dietetic Association.

(2) Each of these board members shall have been practicing dietitians for at least five (5) years preceding their appointment.

(e)(1) Members of the board may be removed from office by the Governor for cause.

(2) In case of death, resignation, or removal, the vacancy of the unexpired term shall be filled by the Governor in the same manner as other appointments.

(3) A person chosen to fill a vacancy shall be appointed only for the unexpired terms of the board member replaced.

(4) No members shall serve more than two (2) consecutive terms.

(f) Each member of the board may receive expense reimbursement in accordance with § 25-16-901 et seq. However, expenses shall in no case exceed the fees collected by the board. All reimbursements for expenses authorized by this chapter shall be paid from the Dietetics Practice Licensing Fund.

History. Acts 1989, No. 392, §§ 8, 10; 1997, No. 250, § 156.

Publisher's Notes. Acts 1989, No. 392, § 8, provided, in part: "In making the initial appointments to the Board, the Governor shall designate the terms of the

initial appointees as follows:

"(1) three (3) members, including two (2) dietitians and one (1) member who represents the public at large for terms of five (5) years;

“(2) two (2) members, including one (1) dietitian, and one (1) member who represents the public at large for terms of four (4) years;

“(3) two (2) members, including one (1) dietitian, and one (1) member who repre-

sents the public at large, for terms of two (2) years;

“(4) appointments shall be made within ninety (90) days after the effective date of this act.”

17-83-202. Organization and meetings — Personnel.

(a)(1) At least two (2) regular meetings of the Arkansas Dietetics Licensing Board shall be held each calendar year, and at the first regular meeting every two (2) years, the board shall elect a chair and vice chair. Other regular meetings may be held at such time as the rules of the board may provide.

(2) Special called meetings may be held at the discretion of the chair or at the written request of any three (3) members of the board.

(3) Reasonable notice of all meetings shall be given in the manner prescribed by the laws of this state.

(4) A quorum of the board shall consist of four (4) members.

(5) A secretary of the board shall be elected by the board and shall hold office at the pleasure of the board.

(6) The board shall adopt a seal, which must be affixed to all certificates issued by the board.

(b) The board shall employ necessary personnel for the performance of its functions and fix the compensation thereof within the limits of funds available to the board.

History. Acts 1989, No. 392, §§ 9, 10.

A.C.R.C. Notes. Acts 1989, No. 392, § 9, provided, in part, that the board

should hold a meeting within 30 days after its members were first appointed for the purpose of organization.

17-83-203. Duties and powers — Fees — Continuing education.

(a) In addition to the duties set forth elsewhere in this chapter, the Arkansas Dietetics Licensing Board shall:

(1) Establish an examination procedure, utilizing the examination approved by the board;

(2) Establish a licensure reciprocity agreement with other states;

(3) Annually compile a list of names, addresses, both residential and business, and dates and license numbers of all persons licensed under this chapter to be available upon request and cost;

(4) Establish mechanisms for appeal and decisions regarding applications and granting of licenses, such mechanisms to include provisions for judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(5) Make such rules and regulations not inconsistent with law as may be necessary to regulate its proceedings;

(6) Promulgate rules and regulations necessary to implement this chapter;

(7) Compile an annual report;

(8) Establish rules defining unprofessional conduct and set forth and publish standards of professional responsibility and publish standards for practice within twelve (12) months after the first board meeting;

(9) Receive and process complaints;

(10) Impose penalties;

(11) Establish fees and publish financial records; and

(12) Require at the time of license renewal each applicant to present satisfactory evidence that in the period since the license was issued he or she has completed the continuing education requirements in a manner specified by the board.

(b) The board shall establish, charge, and collect for:

(1) The filing of an application for a license under this chapter;

(2) The original issuance of a license under this chapter;

(3) A renewal of a license issued in accordance with this chapter; and

(4) Replacement of a license or renewal lost or destroyed.

(c) The board shall establish continuing education requirements and shall notify the applicants for licensing of the requirements.

History. Acts 1989, No. 392, § 9.

17-83-204. Funds.

(a)(1) The Secretary of the Arkansas Dietetics Licensing Board shall receive and account for all money derived under the provisions of this chapter and shall deposit the money weekly into financial institutions other than the State Treasury.

(2) These moneys shall be known as the "Dietetics Practice Licensing Fund".

(b) There shall be such audits of this fund as are required by law.

(c) The secretary shall give a surety bond for the faithful performance of his or her duties to the Governor in the sum of ten thousand dollars (\$10,000) or an amount recommended by the Auditor of State. The premium for this bond shall be paid out of the fund.

(d) The board may make expenditures from this fund for any purpose which is reasonable and necessary to carry out the provisions of this chapter.

History. Acts 1989, No. 392, § 9.

SUBCHAPTER 3 — LICENSING

SECTION.

17-83-301. License required.

17-83-302. Waivers for licensing.

17-83-303. Qualifications for licenses.

17-83-304. Provisional licenses.

17-83-305. Reciprocity.

SECTION.

17-83-306. Renewal of licenses.

17-83-307. Grounds for denial, revocation, or suspension.

17-83-308. Disciplinary proceedings.

17-83-301. License required.

Beginning July 4, 1990, no individual shall practice or offer to practice dietetics within the meaning of this chapter unless he or she is duly licensed or is a student under the provisions of this chapter or is otherwise entitled under § 17-83-104 or § 17-83-302.

History. Acts 1989, No. 392, § 6.

17-83-302. Waivers for licensing.

(a) For one (1) year beginning July 3, 1989, the Arkansas Dietetics Licensing Board shall waive the examination requirement and grant a license to any person who:

(1) Has received a baccalaureate or postbaccalaureate degree from a regionally accredited United States college or university with a program in human nutrition, food and nutrition, dietetics, or food systems management;

(2) Has completed a planned continuous preprofessional experience component in dietetic practice of not fewer than nine hundred (900) hours under the supervision of a registered dietitian or licensed dietitian; and

(3) Has been employed in the practice of dietetics for at least three (3) of the last ten (10) years preceding July 3, 1989; or

(4) Is registered with the Commission on Dietetic Registration.

(b) Applicants who have obtained their education outside of the United States and its territories must have their academic degree or degrees validated as equivalent to the baccalaureate or postbaccalaureate degree conferred by a regionally accredited college or university in the United States.

History. Acts 1989, No. 392, § 7.

17-83-303. Qualifications for licenses.

The Arkansas Dietetics Licensing Board may issue a license as licensed dietitian to an applicant who qualifies as follows:

(1) The applicant files an application and has:

(A) Received a baccalaureate or postbaccalaureate degree from a regionally accredited United States college or university with a program in human nutrition, food and nutrition, dietetics, or food systems management. Applicants who have obtained their education outside of the United States and its territories must have their academic degree or degrees validated as equivalent to the baccalaureate or postbaccalaureate degree conferred by a regionally accredited college or university in the United States;

(B) Completed a planned, continuous preprofessional experience component in dietetic practice of not fewer than nine hundred (900) hours under the supervision of a registered dietitian or licensed dietitian; and

(C) Passed an examination as defined by the board; or

(2) The applicant files an application and provides evidence of current registration as a registered dietitian by the Commission on Dietetic Registration.

History. Acts 1989, No. 392, § 5.

17-83-304. Provisional licenses.

(a) A provisional license to practice as a dietitian may be issued by the Arkansas Dietetics Licensing Board upon the filing of an application and submission of evidence of successful completion of the education requirements.

(b) A provisional license shall expire eighteen (18) months from the date of issuance. Provisional licenses may be renewed one (1) time upon submission to the board of a satisfactory explanation for the applicant's failure to become licensed within the original eighteen-month period.

(c) A provisional license shall permit the holder to practice only under the supervision of a dietitian licensed in this state.

History. Acts 1989, No. 392, § 11.

17-83-305. Reciprocity.

Reciprocity shall be provided for licensed dietitians from other states, provided that the standards for licensing in that state are not less than those provided for in this chapter as determined by the Arkansas Dietetics Licensing Board.

History. Acts 1989, No. 392, § 12.

17-83-306. Renewal of licenses.

(a) All licenses shall be effective when issued by the Arkansas Dietetics Licensing Board.

(b) The license of a licensed dietitian shall be ruled valid for one (1) year after the date of issuance.

(c)(1)(A) A license may be renewed by the payment of a renewal fee as set by the board.

(B) The board shall mail an application for renewal of a license to each person sixty (60) days prior to the renewal date. This shall be mailed to the most recent address of the person as it appears on the record of the board. The person shall complete the renewal application and return it to the board, accompanied by the required renewal fee, within not more than sixty (60) days after the renewal application was mailed by the board. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a notice of license renewal for the next year.

(C) If a person fails to renew his or her license within the sixty-day period, the license shall lapse the last day of the month of the

calendar year that is exactly one (1) year from the calendar year and month in which the license was issued.

(D) If the renewal license has been expired for not more than ninety (90) days, the person may renew the license by paying to the board the required renewal fee and a penalty in an amount equal to one-half ($\frac{1}{2}$) of the renewal fee.

(E) If the license has been expired for more than ninety (90) days but less than one (1) year, the person may renew the license by paying to the board the unpaid renewal fee and a penalty in an amount equal to the renewal fee.

(2) At the time of license renewal, each applicant shall present satisfactory evidence that in the period since the license was issued, he or she has completed the continuing education requirements as required by the board.

(d) If a license has been expired one (1) year or more, the license shall not be renewed, but a new license may be obtained by applying to the board as a new licensee.

History. Acts 1989, No. 392, § 13.

17-83-307. Grounds for denial, revocation, or suspension.

The Arkansas Dietetics Licensing Board may refuse to issue or renew a license or may revoke or suspend a license issued under this chapter for any of the following, but is not limited to:

(1) Violation of a provision of this chapter;

(2) Engaging in unprofessional conduct or gross incompetence as defined by the rules of the board or violating the standards of professional responsibility adopted and published by the board;

(3) Conviction in this or any other state of any crime that is a felony in this state; or

(4) Conviction of a felony in a federal court.

History. Acts 1989, No. 392, § 15.

17-83-308. Disciplinary proceedings.

(a) Hearings shall be conducted by the Arkansas Dietetics Licensing Board.

(b) Decisions will be determined by a majority vote of the board.

(c) All proceedings will be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1989, No. 392, § 16.

CHAPTER 84
HEARING INSTRUMENT DISPENSERS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
 - 2. ARKANSAS BOARD OF HEARING INSTRUMENT DISPENSERS.
 - 3. LICENSING.
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Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-83-101 et seq.

Effective Dates. Acts 1969, No. 197, § 19: Mar. 7, 1969. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds that the public has been injured and may be further injured through the activities of certain persons unskilled in the fitting and dispensing of hearing aids but who hold themselves out as having such skills and who misrepresent the condition of prospective customers' hearing ability and the capability of a hearing aid, thereby

discouraging some prospective customers from seeking needed medical attention or the services of a person qualified to fit hearing aids, thus taking advantage of the public, particularly elderly persons who more often suffer from a loss of hearing ability and who are less able to protect themselves from the unscrupulous, and that an emergency is hereby declared to exist. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground

for revocation of license or other disciplinary action. 44 A.L.R.4th 248.
C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-84-101. Definitions.
- 17-84-102. Applicability and construction.

SECTION.

- 17-84-103. Penalty — Injunction.
 - 17-84-104. Bills of sale and instruction booklets.
-

Effective Dates. Acts 1999, No. 592, § 16: Mar. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the existing permits for hearing instrument dispensers expire on June 30, 1999; this act makes various changes in that law; that the board needs to implement this act on July 1, 1999; and that substantial lead time will be necessary in order to have this act implemented by July 1, 1999. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-84-101. Definitions.

As used in this chapter:

(1) "Board" means the Arkansas Board of Hearing Instrument Dispensers;

(2) "Current" means valid, effective, unexpired, or unsuspended and unrevoked with reference to a license or internship;

(3) "Established place of business" means a place of business at a permanent address in the State of Arkansas or, if outside the state, within seventy-five (75) miles of the Arkansas state line, which is open to the public during normal business hours at least thirty-two (32) hours per week;

(4) "Hearing instrument" means any instrument or device worn in or behind the ear designed for or represented as aiding, improving, amplifying, or correcting human hearing and any parts, attachments, or accessories of such an instrument or device;

(5) "In-office assembled hearing instrument" means an instrument built by the hearing instrument dispenser or under his or her supervision from components, including a premanufactured faceplate and a shell made by the dispenser or made under his or her supervision;

(6) "License" and "internship" mean, respectively, license as provided for in § 17-84-306 and internship as provided for in § 17-84-304;

(7) "Licensed" means holding a current license;

(8) "Practice of dispensing hearing instruments" means conducting and interpreting hearing tests for purposes of identifying the type and degree of hearing loss and making proper recommendations based on those results, selecting suitable hearing instruments, making earmolds or ear impressions, and providing appropriate counseling pertaining to the selling, renting, leasing, pricing, delivery, and warranty of hearing instruments;

(9) "Sponsor" means a licensed person who trains and directly supervises an intern; and

(10) "Unethical conduct" includes, but is not limited to:

(A) Obtaining any fee or making any sale by fraud or misrepresentation;

(B) Employing directly or indirectly any unlicensed person to perform any work covered by this chapter;

(C) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however made, that is misleading or untruthful;

(D) Advertising a particular model, type, or kind of hearing instrument for sale when prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind if the purpose of the advertisement is to obtain prospects for the sale of a model, type, or kind other than that advertised;

(E) Falsely representing that the services or advice of a person licensed to practice medicine will be used or made available in the

selection, fitting, adjustment, maintenance, or repair of hearing instruments or using the words “doctor”, “audiologist”, or “clinic” or like words, abbreviations, or symbols that suggest the medical profession when such use is not accurate;

(F) Permitting another to use the holder’s license or internship certificate;

(G) In any manner making false representations concerning a competitor or his or her products, business methods, selling prices, values, credit terms, policies, services, reliability, ability to perform contracts, credit standing, integrity, or morals;

(H) In any manner using, imitating, or simulating the trademark, trade name, corporate name, brand, model name, or number or label of any competitor, manufacturer, or product when it implies or represents a relationship that does not exist;

(I) Obtaining information concerning the business of a competitor by bribery of any employee or agent of the competitor, by the impersonation of one in authority, or by any other unfair or deceptive means; and

(J) Directly or indirectly giving or offering to give anything of value to any person who advises others in a professional capacity as an inducement to influence others to purchase products sold by a hearing instrument dispenser or to refrain from dealing with a competitor.

History. Acts 1969, No. 197, § 2; A.S.A. 1947, § 72-1702; Acts 1991, No. 46, § 1; 1999, No. 592, § 1; 2007, No. 428, § 1.

Amendments. The 2007 amendment deleted “unless the context otherwise re-

quires” and made a minor punctuation change in the introductory paragraph, and substituted “thirty-two (32)” for “thirty-five (35)” in (3).

CASE NOTES

Constitutionality.

This section, which regulates business activity, has been given great leeway in a constitutional challenge for vagueness; thus, when coupled with previous holdings that terms such as “unethical conduct” and “unprofessional conduct” were

susceptible to plain understanding by the reasonable person, a hearing instrument dispenser’s challenge failed as the statute gave ample guidance to the reasonable hearing instrument dispenser. *Ark. Hearing Instrument Dispenser Bd. v. Vance*, 359 Ark. 325, 197 S.W.3d 495 (2004).

17-84-102. Applicability and construction.

(a) This chapter shall not apply to an audiologist who is licensed under the provisions of the Licensure Act of Speech-Language Pathologists and Audiologists, § 17-100-101 et seq., or to any person while engaged in the practice of recommending hearing instruments as part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public charitable institution or nonprofit organization which is primarily supported by voluntary contributions.

(b) This chapter shall not be construed to prohibit any doctor who holds a valid license issued by the Arkansas State Medical Board and specializes in otology or otolaryngology from treating or fitting hearing instruments to the human ear or to prohibit any corporation, partnership, trust, association, or other like organization from engaging in the business of fitting and selling hearing instruments at retail, if it employs only natural persons licensed under this chapter in the direct fitting and sale of such products.

History. Acts 1969, No. 197, § 5; A.S.A. 1947, § 72-1706; Acts 1991, No. 46, § 1; 1999, No. 592, § 2.

17-84-103. Penalty — Injunction.

(a) Any person convicted of violating any provision of this chapter shall be guilty of a Class B misdemeanor.

(b) Any violation of the provisions of this chapter may be enjoined by the circuit courts of this state.

History. Acts 1969, No. 197, § 16; A.S.A. 1947, § 72-1716; Acts 1991, No. 46, § 1; 2005, No. 1994, § 238.

17-84-104. Bills of sale and instruction booklets.

(a) Whether supplied by the dispenser or at the dispenser's order or direction, any person who practices the dispensing of hearing instruments shall deliver to each person supplied with a hearing instrument a bill of sale or comparable document containing the following:

- (1) The dispenser's signature;
- (2) The address and telephone number of the dispenser's established place of business;
- (3) The number of the dispenser's license;
- (4) A description of the make, model, and condition of the hearing instrument stating whether it is new, used, rebuilt, or in-office assembled, identifying the manufacturer, rebuilder, or in-office assembler, together with a description of any warranties covering the instrument; and

(5) The amount charged.

(b) Additionally, the dispenser of an in-office assembled hearing instrument shall deliver to the person supplied with the in-office assembled hearing instrument an instruction booklet for the in-office assembled hearing instrument.

History. Acts 1969, No. 197, § 4; A.S.A. 1947, § 72-1705; Acts 1991, No. 46, § 1; 1999, No. 592, § 3.

SUBCHAPTER 2 — ARKANSAS BOARD OF HEARING INSTRUMENT DISPENSERS

SECTION.

17-84-201. Creation and composition.

17-84-202. Organization and proceedings.

SECTION.

17-84-203. Powers and duties.

17-84-204. Disposition of funds — Compensation of members.

Effective Dates. Acts 1983, No. 131, § 6 and No. 135, § 6; Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 592, § 16; Mar. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the existing permits for hearing instrument dispensers expire on June 30, 1999; this act makes various changes in that law; that the board needs to implement this act on July 1, 1999; and that substantial lead time will be necessary in order to have this act implemented by July 1, 1999. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-84-201. Creation and composition.

(a) There is created the Arkansas Board of Hearing Instrument Dispensers.

(b) The board shall be composed of eight (8) members appointed by the Governor for terms of three (3) years as follows:

(1)(A) At least four (4) of the members shall be hearing instrument dispensers licensed under this chapter who have held a valid license for at least three (3) years.

(B) The Governor shall consider nominations from the Arkansas Hearing Society;

(2) At least one (1) member shall be a physician licensed to practice medicine in Arkansas and specializing in otology or otolaryngology;

(3) At least one (1) member shall be an audiologist holding a master's degree or doctoral degree in audiology from a recognized college or university; and

(4) Two (2) members shall not be actively engaged in or retired from the practice of dispensing hearing instruments. One (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older. Both members shall be appointed from the state at large subject to confirmation by the Senate and shall be full voting members but shall not participate in the grading of examinations.

(c)(1) All terms shall expire on July 31 of the designated year.

(2) Each member shall serve for the term of his or her appointment and until his or her successor has been appointed and qualified.

(3) No member shall serve more than three (3) terms consecutively.

(d) In the event of a vacancy on the board, a new member shall be appointed to serve out the unexpired term.

(e) The Governor may remove any member for cause.

History. Acts 1969, No. 197, § 1; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 72-1701; Acts 1991, No. 46, § 1; 1999, No. 592, § 4; 2007, No. 428, § 2.

Publisher's Notes. The terms of the members of the Arkansas Board of Hearing Aid Dispensers, other than the representative of the elderly, are arranged so that one term expires every year.

Amendments. The 2007 amendment added the (b)(1)(A) and (b)(1)(B) designations; deleted "and the Arkansas Speech Language Hearing Association" following "Society" in (b)(1)(B); substituted "three (3)" for "two (2)" in (c)(3); and deleted former (f).

17-84-202. Organization and proceedings.

(a)(1) The Arkansas Board of Hearing Instrument Dispensers shall meet at least two (2) times a year at times and places to be designated by the board and upon such notice as the board may prescribe.

(2) The board shall elect a chair, vice chair, and secretary-treasurer annually, each to serve in his or her respective capacity for one (1) year.

(b) Any five (5) of the eight (8) members of the board, when properly convened, may conduct business of the board. The board may appoint one (1) or more of its members or any other person it deems appropriate as examiners for the purpose of hearing evidence, reporting findings thereon, and making recommendations to the entire board for a decision on any matter over which the board has authority.

(c) The board shall keep a record of all of its proceedings and transactions and shall annually make a report to the Governor showing

all receipts and disbursements and a summary of all business transacted during the year.

History. Acts 1969, No. 197, §§ 1, 15; A.S.A. 1947, §§ 72-1701, 72-1715; Acts 1991, No. 46, § 1.

17-84-203. Powers and duties.

The powers and duties of the Arkansas Board of Hearing Instrument Dispensers are:

(1) To authorize all disbursements necessary to carry out the provisions of this chapter and to receive and account for all fees;

(2) To furnish a list of study materials for applicants to use in preparing for qualifying examinations;

(3) To prepare, supervise, and administer at least one (1) time each year a qualifying examination based on nationally accepted norms to test the knowledge and proficiency of applicants;

(4) To register, issue, and renew licenses and internships to persons qualified under this chapter and to suspend, revoke, or refuse to renew licenses and internships pursuant to this chapter;

(5) To make rules and regulations not inconsistent with the laws of this state that are necessary for the enforcement and orderly administration of this chapter. However, no rule or regulation shall be promulgated that in any manner serves to restrict the number of licenses that may be issued in any city, town, or county of this state;

(6) To require the periodic inspection and calibration of audiometric testing equipment and tympanometers and to carry out the periodic inspection of facilities of persons who practice the fitting or selling of hearing instruments;

(7) To employ and retain the services of attorneys, accountants, and other necessary assistants in carrying out the provisions of this chapter;

(8) To require, if the board deems necessary, an applicant, dealer, or licensee to furnish a surety bond in an amount fixed by the board for the benefit of any person damaged as the result of a violation of this chapter. All requirements pertaining to the surety bond may be promulgated by regulation of the board;

(9) To set the following fees:

(A) An application fee not to exceed two hundred fifty dollars (\$250);

(B) An examination fee not to exceed:

(i) One hundred fifty dollars (\$150) for the written examination; and

(ii) Fifty dollars (\$50.00) each for the earmold practicum, the audiometric practicum, and the law and rules practicum;

(C) A reexamination fee not to exceed the fee under subdivision (9)(B) of this section for the portion of the examination being retaken;

(D) A permanent registration fee not to exceed seventy-five dollars (\$75.00);

(E) An annual license fee not to exceed two hundred fifty dollars (\$250);

(F) A late penalty of ten percent (10%) of the annual license fee if paid within thirty (30) days after expiration;

(G) A license reinstatement fee of one and one-half (1 1/2) times the annual license fee, if the renewal fee is not paid within the thirty-day grace period;

(H) An internship fee not to exceed two hundred fifty dollars (\$250);

(I) A fee for an endorsement to another state not to exceed twenty dollars (\$20.00);

(J) A license replacement fee or a duplicate license fee not to exceed twenty-five dollars (\$25.00);

(K) An insufficient funds fee not to exceed twenty-five dollars (\$25.00); and

(L) A continuing education unit approval fee not to exceed two hundred fifty dollars (\$250);

(10) To employ investigators, issue subpoenas, and perform all activities necessary to effectively investigate claims and pursue disciplinary action against licensees; and

(11) To establish the standards of practice for hearing instrument dispensers in the State of Arkansas.

History. Acts 1969, No. 197, § 3, subsec. (2); A.S.A. 1947, § 72-1704; Acts 1991, No. 46, § 1; 1995, No. 1342, § 1; 1999, No. 592, § 5; 2007, No. 428, § 3.

Amendments. The 2007 amendment inserted “and tympanometers” following “equipment” in (6); substituted “two hundred fifty dollars (\$250)” for “one hundred fifty dollars (\$150)” in (9)(A); in (9)(B), deleted “one hundred fifty dollars (\$150)” following “exceed” and made a minor punctuation change; added (9)(B)(i) and (9)(B)(ii); substituted “the fee under sub-

division (9)(B) of this section for the portion of the examination being retaken” for “one hundred fifty dollars (\$150)” in (9)(C); substituted “seventy-five dollars (\$75.00)” for “fifty dollars (\$50.00)” in (9)(D); substituted “two hundred fifty dollars (\$250)” for “two hundred dollars (\$200)” in (9)(E); in (9)(G), substituted “(1 1/2)” for “(1.5)” and made a minor stylistic change; substituted “two hundred fifty dollars (\$250)” for “one hundred fifty dollars (\$150)” in (9)(H); and added (9)(I) through (9)(L).

17-84-204. Disposition of funds — Compensation of members.

(a)(1) Fees collected by the Arkansas Board of Hearing Instrument Dispensers shall be used to pay expenses in administering this chapter.

(2) All moneys shall be received, disbursed, and accounted for by the Secretary-treasurer of the Arkansas Board of Hearing Instrument Dispensers or a person designated by the board who shall be bonded at the expense of the board.

(3) All moneys not expended by the board to pay expenses in administering this chapter shall be retained by the board from year to year to be expended for the purposes expressed in this chapter.

(b) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1969, No. 197, § 15; 1985, No. 570, § 1; A.S.A. 1947, § 72-1715; Acts 1991, No. 46, § 1; 1997, No. 250, § 157.

A.C.R.C. Notes. The operation of subdivision (a)(2) of this section as it regards bonding was suspended by adoption of a

self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subdivision may again become effective upon cessation of coverage under that program. See § 21-2-703.

SUBCHAPTER 3 — LICENSING

SECTION.	SECTION.
17-84-301. Application of administrative procedure act.	17-84-306. Issuance and renewal.
17-84-302. License or internship certificate required.	17-84-307. [Repealed.]
17-84-303. Unlawful practices.	17-84-308. Suspension, revocation, nonissuance, or nonrenewal.
17-84-304. Qualifications for licensure and internship.	17-84-309. Notification and use of business address.
17-84-305. Examinations.	17-84-310. [Transferred.]

Cross References. Continuing education requirements, § 17-80-104.

Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1999, No. 592, § 16; Mar. 15, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that the existing permits for hearing instrument dispensers expire on June 30, 1999; this act makes various changes in that law; that the board needs to implement this act on July 1, 1999; and that substantial lead time will be necessary in

order to have this act implemented by July 1, 1999. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-84-301. Application of administrative procedure act.

The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to the authority and procedures of the Arkansas Board of Hearing Instrument Dispensers in exercising control over licensing under this chapter.

History. Acts 1969, No. 197, § 17; A.S.A. 1947, § 72-1717; Acts 1991, No. 46, § 1.

17-84-302. License or internship certificate required.

No person shall engage in the sale of hearing instruments or display a sign or in any other way advertise or hold himself or herself out as a

person who practices the dispensing of hearing instruments unless he or she is licensed under this chapter or is the holder of an internship as provided for in § 17-84-304 and has his or her license or internship certificate conspicuously posted in his or her office or place of business.

History. Acts 1969, No. 197, § 3, sub- No. 46, § 1; 1995, No. 1342, § 2; 1999, No. sec. (1); A.S.A. 1947, § 72-1703; Acts 1991, 592, § 6.

17-84-303. Unlawful practices.

It shall be unlawful for any person to:

(1) Sell or purchase a license or permit in a manner not authorized by this chapter;

(2) Willfully alter, with the intent to defraud, any license or permit;

(3) Represent as a valid license or permit one which has been purchased, fraudulently obtained, counterfeited, or materially altered; or

(4) Willfully make a false material statement in any application to the Arkansas Board of Hearing Instrument Dispensers.

History. Acts 1969, No. 197, § 14; A.S.A. 1947, § 72-1714; Acts 1991, No. 46, § 1.

17-84-304. Qualifications for licensure and internship.

(a) An applicant for a license or an internship shall:

(1) Submit an application on the form and within the time prescribed by the Arkansas Board of Hearing Instrument Dispensers;

(2) Pay an application fee in the amount prescribed by the board; and

(3) Show to the satisfaction of the board that he or she:

(A) Is twenty (20) years of age or older;

(B) Has an education equivalent of two (2) or more years of accredited college-level course work from a regionally accredited college or university; and

(C) Is of good moral character.

(b) An applicant who meets the qualifications set out in subsection (a) of this section shall meet at least one (1) of the following criteria:

(1) Complete a one-year employment internship during which he or she is under the direct personal and physical supervision of a sponsor who has continuously held in good standing for a period of not less than three (3) years either a valid Arkansas hearing instrument dispenser's license or a valid Arkansas audiology license;

(2) Hold a National Board for Certification in Hearing Instrument Sciences certificate;

(3) Be registered as a hearing instrument dispenser in good standing in another state whose licensing requirements meet or exceed the licensing requirements of the State of Arkansas at the time of his or her application;

(4) Be a graduate of an American Conference of Audioprosthology program; or

(5) Hold an Associate of Applied Science degree in Hearing Healthcare Practitioner or a similar degree from a regionally accredited college or university.

(c) Before the beginning of the internship period, the applicant shall:

(1) Receive board approval of the application and training schedule; and

(2) Pay the internship fee prescribed by the board under this chapter.

(d)(1) A person participating in a valid internship program may take the licensing examination administered by the board upon written recommendation of his or her sponsor after successfully completing six (6) months in the internship program.

(2) If the person successfully passes the examination, he or she may complete the one-year internship program under the oversight of the sponsor without personal and physical supervision if he or she works out of the same place of business as the sponsor.

(3) If the person fails the examination, he or she shall complete the full one-year internship before reexamination.

(4) Any examination taken during an internship shall be considered as one (1) of three (3) attempts to pass the examination allowed under § 17-84-305(d).

(5) It is a violation of this chapter for any person during the course of his or her internship to practice the dispensing of hearing instruments except under:

(A) The direct personal and physical supervision of his or her sponsor; or

(B) The conditions set out in this subsection.

History. Acts 1969, No. 197, § 6; A.S.A. 1947, § 72-1707; Acts 1991, No. 46, § 1; 1995, No. 1342, § 3; 1999, No. 592, § 7; 2001, No. 290, § 1; 2007, No. 428, § 4.

Amendments. The 2007 amendment rewrote the section.

17-84-305. Examinations.

(a) The examination provided for in § 17-84-304 shall be given by the Arkansas Board of Hearing Instrument Dispensers at least one (1) time each year.

(b) The examination may be written or practical, or both, and shall consist of tests of knowledge in the following areas as they pertain to the fitting of hearing instruments:

(1) Basic physics of sound;

(2) The human hearing mechanism, including the science of hearing and the causes and rehabilitation of abnormal hearing and hearing disorders;

(3) Structure and function of hearing instruments;

(4) Pure tone audiometry, including air conduction testing and bone conduction testing;

(5) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

(6) Effective masking;

- (7) Recording and evaluation of audiograms and speech audiometry to determine hearing instrument candidacy;
- (8) Selection and adaptation of hearing instruments;
- (9) Taking earmold impressions;
- (10) Tympanometry; and
- (11) Testing of other knowledge and skills as may be required to determine an applicant's ability and suitability for the practice of dispensing hearing instruments to the public.

(c) The tests under this section shall not include questions requiring a medical or surgical education.

(d)(1) Applicants who fail to pass the required examination may retake the examination by paying a reexamination fee, as prescribed by the board pursuant to this chapter, for each additional examination taken.

(2) After three (3) failed attempts to pass the examination, the applicant shall complete an internship or repeat the internship described in § 17-84-304.

History. Acts 1969, No. 197, §§ 6, 7; A.S.A. 1947, §§ 72-1707, 72-1708; Acts 1991, No. 46, § 1; 1995, No. 1342, § 4; 1999, No. 592, § 8; 2007, No. 428, §§ 5, 6.

Amendments. The 2007 amendment redesignated former (b)(1) as part of present (b) and made minor stylistic

changes; redesignated former (b)(A) as present (b)(1) and redesignated the remaining subsections accordingly; added (b)(10); added the (d)(1) and (d)(2) designations; and substituted "shall complete an internship or repeat" for "must repeat" in (d)(2).

17-84-306. Issuance and renewal.

(a) Upon payment of a permanent registration fee and an annual license fee as prescribed by the Arkansas Board of Hearing Instrument Dispensers pursuant to this chapter, the board shall register and issue licenses to applicants who have fulfilled the requirements of this chapter.

(b) All licenses shall expire on the date or dates set by the board, and all licenses shall be renewed annually.

(c)(1) The fee for renewal of a license as prescribed by the board pursuant to this chapter shall be paid before the expiration of the license.

(2)(A) Failure to make the payment before the expiration date of the license shall result in the payment of the license renewal fee plus a late penalty as prescribed by the board pursuant to this chapter if paid within thirty (30) days after expiration.

(B) If the renewal fee is not paid within the thirty-day grace period, the board shall renew the license upon payment of the required fee as prescribed by the board pursuant to this chapter and satisfaction of all other requirements contained in this chapter for the renewal of the license.

(C) If the license renewal fee is delinquent by at least sixty (60) days, the licensee shall be reexamined prior to the renewal of the license.

(d)(1) The board shall require that all applicants seeking renewal of their licenses shall show proof of attending during the preceding year a minimum of twelve (12) hours of board-approved continuing education in the methods and techniques of testing for and fitting hearing instruments, including at least one (1) hour of ethics.

(2) The board shall require that all applicants seeking renewal of their licenses shall present written evidence of annual calibration of all audiometers and tympanometers to current national standards.

(3) The board shall require that all new applicants and all applicants seeking renewal of their licenses shall state whether they are engaged in the practice of dispensing in-office assembled hearing instruments.

History. Acts 1969, No. 197, § 8; 1977, No. 406, § 1; A.S.A. 1947, § 72-1709; Acts 1991, No. 46, § 1; 1997, No. 731, § 1; 1999, No. 592, § 9; 2007, No. 428, § 7.

Publisher's Notes. As to the registration and licensing of persons actively engaged in the practice of fitting and dis-

persing hearing aids in Arkansas on March 7, 1969, see Acts 1969, No. 197, § 11.

Amendments. The 2007 amendment inserted "and tympanometers" following "audiometers" in (d)(2).

17-84-307. [Repealed.]

A.C.R.C. Notes. This section was formerly codified as § 17-84-308. Former § 17-84-307 was omitted when subchapter 3 was amended by Acts 1991, No. 46, § 1.

Publisher's Notes. This section, con-

cerning training permits, was repealed by Acts 1999, No. 592, § 10. The section was derived from Acts 1969, No. 197, § 10; A.S.A. 1947, § 72-1711; Acts 1991, No. 46, § 1.

17-84-308. Suspension, revocation, nonissuance, or nonrenewal.

(a) The Arkansas Board of Hearing Instrument Dispensers may suspend, revoke, or refuse to issue or renew the license or internship of any person for any of the following causes:

(1) Being convicted of a crime involving moral turpitude. A record of a conviction, certified by the judge or the clerk of the court where the conviction occurred, shall be sufficient evidence to warrant suspension, revocation, or refusal to issue or renew;

(2) Securing a license or internship under this chapter through fraud or deceit;

(3) Unethical conduct, gross ignorance, or inefficiency in the conduct of his or her practice;

(4) Using a false name or an alias in his or her practice;

(5) Violation of any provision of this chapter; or

(6) Failure to comply with any of the requirements for issuance of the license or internship.

(b) In addition to acting against a license or internship or in lieu of acting against a license or internship, the board may fine the individual in an amount not to exceed two thousand dollars (\$2,000) for each offense.

(c) The board may dismiss any complaint or charges which it finds to be unfounded or trivial. The board may settle any complaint or charges without holding a hearing.

History. Acts 1969, No. 197, § 13; A.S.A. 1947, § 72-1713; Acts 1991, No. 46, § 1; 1999, No. 592, § 11.

A.C.R.C. Notes. This section was for-

merly codified as § 17-84-309. Former § 17-84-308 was renumbered as § 17-84-307 and has subsequently been repealed.

CASE NOTES

Constitutional Challenge.

Hearing dispenser's challenge to this section as a violation of due process rights was moot where, although the dispenser was found to be in violation of the prohibition against unethical conduct, the Arkansas Hearing Instrument Dispenser Board chose not to impose a monetary sanction, suspend the dispenser's license, or revoke

his license; thus, the dispenser's argument that the board had been given unconstitutional discretion was not reached since the board did not impose one of the penalties that the dispenser claimed was subject to an unconstitutional grant of discretion. Ark. Hearing Instrument Dispenser Bd. v. Vance, 359 Ark. 325, 197 S.W.3d 495 (2004).

17-84-309. Notification and use of business address.

(a) Every person who holds a license or internship shall notify the Arkansas Board of Hearing Instrument Dispensers in writing of the address of his or her established place of business and all satellite locations.

(b) Any notice required to be given by the board to a person may be given by mailing it to him or her at the address of his or her established place of business.

(c) It shall be the responsibility of every person who holds a license or internship to notify the board by certified letter of every change in his or her established place of business and all satellite locations within ten (10) days of any change.

History. Acts 1969, No. 197, § 12; A.S.A. 1947, § 72-1712; Acts 1991, No. 46, § 1; 1999, No. 592, § 12.

A.C.R.C. Notes. This section was formerly codified as § 17-84-310. Former § 17-84-309 is now codified as § 17-84-308.

17-84-310. [Transferred.]

A.C.R.C. Notes. This section has been renumbered as § 17-84-309.

CHAPTER 85 LAY MIDWIVES

SECTION.

17-85-101. Short title.

17-85-102. Purpose.

17-85-103. Definition.

17-85-104. Construction.

SECTION.

17-85-105. Unlawful actions — Exception.

17-85-106. Penalty — Injunctions.

17-85-107. Power to license.

SECTION.

17-85-108. Certificates of birth.

A.C.R.C. Notes. Former chapter 85, which concerned lay midwives, is deemed to be superseded by this chapter. The former chapter was derived from the following sources:

17-85-101. Acts 1983, No. 838, § 1; A.S.A. 1947, § 72-2207.

17-85-102. Acts 1983, No. 838, § 4; A.S.A. 1947, § 72-2209.

17-85-103. Acts 1983, No. 838, § 2; A.S.A. 1947, § 72-2208.

Acts 1987, No. 481, § 4, provided that any person who has been licensed or is presently licensed as a lay midwife under Acts 1983, No. 838, as well as any person who has met eligibility for licensure with the exception of county of practice, shall be entitled to licensure under this chapter.

RESEARCH REFERENCES

ALR. Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

State regulation of midwifery. 59 A.L.R.4th 929.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., § 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

Survey — Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

Lisk, A Physician's Respondeat Superior Liability for the Negligent Acts of Other Medical Professionals — When the Captain Goes Down Without the Ship, 13 U. Ark. Little Rock L.J. 183.

17-85-101. Short title.

This chapter shall be known as the "Licensed Lay Midwife Act".

History. Acts 1987, No. 481, § 1.

17-85-102. Purpose.

(a)(1) It is the purpose and intent of this chapter to grant the State Board of Health the authority to license lay midwives statewide.

(2) It is furthermore the intent of this chapter to supersede Acts 1983, No. 838.

(3) This chapter is to be the sole authority of the board to license midwives.

(b) Furthermore, it is the intent of this chapter that the board continue its present lay midwife licensure program, but expand that program to be applicable statewide.

History. Acts 1987, No. 481, § 3.

17-85-103. Definition.

As used in this chapter a “lay midwife” is any person other than a physician, a nurse-midwife, or a licensed nurse practicing within the scope of the Arkansas Nurse Practice Act, § 17-87-101 et seq., who performs for compensation those skills relevant to the management of women in the antepartum, intrapartum, and postpartum period of the maternity cycle.

History. Acts 1987, No. 481, § 2.

quired to practice lay midwifery, § 17-95-

Cross References. License not re- 203.

17-85-104. Construction.

Neither the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., nor the Arkansas Nurse Midwifery Act, § 17-87-501 et seq. [repealed], shall be construed as prohibiting the practice of midwifery by persons licensed under this chapter.

History. Acts 1987, No. 481, § 7.

17-85-105. Unlawful actions — Exception.

(a) It is unlawful for any person not licensed as a lay midwife by the State Board of Health, excluding licensed nurse-midwives and physicians licensed by the State Medical Board, to:

(1) Receive compensation for attending birth as a lay midwife; or

(2) Indicate by any means that the person is licensed to practice lay midwifery in Arkansas.

(b) This chapter shall not prohibit the attendance at birth of the mother’s choice of family, friends, or other uncompensated labor support attendants.

History. Acts 1987, No. 481, §§ 5, 6.

17-85-106. Penalty — Injunctions.

(a) Anyone unlawfully practicing lay midwifery without a license shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for a period of not less than one (1) week nor more than six (6) months, or by fine and imprisonment.

(b)(1) The courts of this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of midwifery in a proceeding by the State Board of Health or any member thereof, or by any citizen of this state in the county in which the alleged unlawful practice occurred or in which the defendant resides, or in Pulaski County.

(2) The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this chapter, but remedy of the injunction shall be in addition to liability to criminal prosecution.

History. Acts 1987, No. 481, § 5.

A.C.R.C. Notes. Acts 1987, No. 481, § 5, provided, in part, that currently practicing lay midwives may be issued a tem-

porary permit to practice which shall expire six months from the date of issuance if they are otherwise in compliance with the rules and regulations.

17-85-107. Power to license.

(a) The State Board of Health is empowered to license lay midwives in this state pursuant to regulations established by the board to include, but not be limited to:

(1) The qualifications for licensure;

(2) Standards of practice for prenatal, intrapartum, and postpartum care of mother and baby;

(3) Physician supervision, physician consultation, licensed nurse-midwife supervision or consultation, or physician and hospital backup;

(4) Grievance procedures; and

(5) Recordkeeping and reporting.

(b) The lawful practice of lay midwifery shall be under the supervision of a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq..

(c) The board may suspend or revoke any licenses issued under this chapter for violations of this chapter or regulations promulgated under this chapter.

History. Acts 1987, No. 481, § 3.

17-85-108. Certificates of birth.

(a) When a birth occurs without a physician in attendance at or immediately after the birth but with a licensed midwife in attendance at or immediately after the birth, it shall then be the responsibility of the midwife to prepare the certificate of birth required by § 20-18-101 et seq. and to file the certificate of birth with the Division of Vital Records of the Department of Health in the manner and within the time prescribed by § 20-18-101 et seq.

(b) The failure of the midwife to prepare and file the certificate of birth shall, in addition to the penalties prescribed by § 20-18-105, constitute grounds for the suspension or revocation of the license granted under this chapter.

History. Acts 1987, No. 481, § 8.

CHAPTER 86

MASSAGE THERAPISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF MESSAGE THERAPY.
3. REGISTRATION.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-98-101 et seq.

Effective Dates. Acts 1981, No. 875, § 21: effective 30 days after passage and approval. Approved Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present Massage Examiners Act

is obsolete and in need of immediate revision and that this act is necessary to accomplish the same. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect beginning thirty (30) days after its passage and approval."

RESEARCH REFERENCES

ALR. Validity and construction of statute or ordinances forbidding treatment in health clubs or massage salons by persons of the opposite sex. 51 A.L.R.3d 936.

Physician's or other healer's conduct, or conviction of offense not directly related to medical practice, as ground for disciplinary action. 34 A.L.R.4th 609.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action.

44 A.L.R.4th 248.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician or other medical practitioner. 70 A.L.R.4th 132.

Licensing and regulation of practice of physical therapy. 8 A.L.R.5th 825.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., § 10 and § 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-86-101. Short title.
17-86-102. Definitions.

SECTION.

- 17-86-103. Penalties.

Effective Dates. Acts 1999, No. 1461, § 23: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act is necessary to improve the functioning of the Arkansas State Board of Massage Therapy for the better regulation of the massage therapy industry and for the better protection of the public. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is

overridden, it shall become effective on the date the last house overrides the veto.”

17-86-101. Short title.

This chapter may be referred to and cited as the “Massage Therapy Act”.

History. Acts 1981, No. 875, § 1; A.S.A. 1947, § 72-1201; Acts 1991, No. 1217, § 1.

CASE NOTES

ANALYSIS

Construction.
Jurisdiction.

Construction.

Former similar law was in derogation of the common law and highly penal, so that it must be strictly construed in favor of those upon whom the burden was imposed and nothing would be taken as intended that was not clearly expressed. *Ladwig v. Arlington Hotel Co.*, 225 Ark. 972, 286

S.W.2d 853 (1956) (decision under prior law).

Jurisdiction.

Former similar law could not be enforced against massage practitioners operating on premises leased by United States government at Hot Springs, since state by virtue of cession to United States lost jurisdiction. *Ladwig v. Nance*, 223 Ark. 559, 267 S.W.2d 314 (1954) (decision under prior law).

17-86-102. Definitions.

As used in this chapter:

- (1) “Board” means the Arkansas State Board of Massage Therapy;
- (2) “Licensee” means any individual licensed under this chapter;
- (3)(A) “Massage therapist” means a person who has:

(i) Earned a diploma from a board-accepted school of massage therapy;

(ii) Passed an examination required by the board; and

(iii) Become licensed and registered to practice massage therapy.

(B) “Massage therapist” includes a person who has previously obtained the massage therapist license under prior state law.

(C) A massage therapist may:

(i) Instruct board-approved continuing education programs; and

(ii) Assist in the instruction of the procedures defined in subdivisions (4)(A)-(C) of this section under the direct supervision of a massage therapy instructor or master massage therapist;

(4)(A) “Massage therapy” means the treatment of soft tissues, which may include skin, fascia, and muscles and their dysfunctions for therapeutic purposes of establishing and maintaining good physical condition, comfort, and relief of pain.

(B) “Massage therapy” is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, and stretching the tissue.

(C) “Massage therapy” also means to engage in the practice of any of the following procedures:

(i) Massage therapy techniques and procedures, either hands-on or with mechanical devices;

(ii) Therapeutic application and use of oils, herbal or chemical preparations, lubricants, nonprescription creams, lotions, scrubs, powders, and other spa services;

(iii) Therapeutic application of hot or cold packs;

(iv) Hydrotherapy techniques;

(v) Heliotherapy, which may include mechanical devices, heat lamps, and other devices;

(vi) Electrotherapy; and

(vii) Any hands-on bodywork techniques and procedures rising to the level of the techniques and procedures intended to be regulated under this chapter and not covered under specific licensing laws of other boards;

(5) “Massage therapy clinic” means a clinic, place, premises, building, or part of a building in which a branch or any combination of branches of massage therapy or the occupation of a massage therapist is practiced;

(6)(A) “Massage therapy instructor” means a person who:

(i) Before July 1, 2010, has completed no fewer than two hundred fifty (250) hours of practical experience as a master massage therapist, which may be gained, in part or in whole, as an assistant to an instructor in a massage school or may be gained, in part or in whole, as a directed instructor in a massage school and has completed no fewer than two hundred fifty (250) continuing education hours as approved by the board;

(ii) On or after July 1, 2010, has been an active and practicing licensee and registered as a master massage therapist for a period of not less than three (3) years preceding the application for an upgrade to massage therapy instructor;

(iii) On or after July 1, 2010, in addition to the experience under subdivision (6)(A)(i) of this section, has completed no fewer than two hundred fifty (250) continuing education hours as approved by the board as a licensed master massage therapist; and

(iv) Is determined by the board to be qualified to be licensed and registered to practice massage therapy.

(B) “Massage therapy instructor” includes a person who has previously obtained the massage therapy instructor license under prior state law.

(C) Massage therapy instructors may:

(i) Instruct board-approved continuing education programs;

(ii) Instruct any of the procedures in subdivision (4) of this section; and

(iii) Instruct basic curricula in a board-registered massage therapy school as required by § 17-86-306(e);

(7) “Massage therapy school” means a registered and licensed facility that meets and follows the required educational standards as established by § 17-86-306 and all pertinent rules established by the board;

(8)(A) “Master massage therapist” means a person who:

(i) Before July 1, 2010, is a licensed and registered massage therapist who has completed no fewer than two hundred fifty (250) hours of practical experience as a massage therapist, which may be gained in part or in whole as an assistant to an instructor in a massage school and has completed no fewer than one hundred twenty-five (125) continuing education hours as approved by the board;

(ii) On or after July 1, 2010, has been an active and practicing licensee and registered as a massage therapist for a period of not less than two (2) years preceding the application for an upgrade to master massage therapist;

(iii) On or after July 1, 2010, in addition to the experience under subdivision (8)(A)(i) of this section, has completed no fewer than one hundred twenty-five (125) continuing education hours as approved by the board; and

(iv) Is determined by the board to be qualified to be licensed and registered to practice massage therapy.

(B) “Master massage therapist” includes a person who had previously obtained the master massage therapist license under a prior state law.

(C) Master massage therapists may:

(i) Instruct board-approved continuing education programs;

(ii) Instruct any of the procedures in subdivision (4) of this section; and

(iii) Instruct, as directed by a massage therapy instructor, basic curricula in a board-registered massage therapy school as required by § 17-86-306(e); and

(9) “This chapter” means the “Massage Therapy Act”, § 17-86-101 et seq.

History. Acts 1981, No. 875, § 2; A.S.A. 1947, § 72-1202; Acts 1991, No. 1217, § 1; 1993, No. 714, § 1; 1997, No. 840, § 1; 1999, No. 1461, § 1; 2009, No. 1305, § 1.

A.C.R.C. Notes. Due to an apparent error in markup, the following language in (8)(A)(i) was stricken through by Acts 2009, No. 1305, § 1: “Is a licensed and registered massage therapist who has completed no fewer than two hundred fifty

(250) hours of practical experience as a massage therapist, which may be gained in part or in whole as an assistant to an instructor in a massage school.” Because Acts 2009, No. 1305, § 1, also set this language out in (8)(A)(i) without strikethrough, there is no indication that the language was to be repealed.

Amendments. The 2009 amendment rewrote the section.

17-86-103. Penalties.

(a) Any person who shall violate any of the provisions of this chapter shall be found guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than six (6)

months or by a fine not exceeding one thousand five hundred dollars (\$1,500), or by both fine and imprisonment, at the discretion of the court.

(b) It shall be the duty of the prosecuting attorney in the county where the violation occurs, upon request by the Arkansas State Board of Massage Therapy, to initiate proper legal proceedings in a court of competent jurisdiction to enforce the provisions of this chapter.

(c) The courts of this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of massage therapy and related techniques in a proceeding by the board or by any citizen of this state in the county in which the alleged unlawful practice occurred or in which the defendant resides or in Pulaski County. The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this chapter, but the remedy of injunction shall be in addition to liability to criminal prosecution.

History. Acts 1981, No. 875, § 18; A.S.A. 1947, § 72-1218; Acts 1991, No. 1217, § 1; 1999, No. 1461, § 2.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF MASSAGE THERAPY

SECTION.

17-86-201. Members.

17-86-202. Officers and employees.

17-86-203. Powers and duties.

SECTION.

17-86-204. Records.

17-86-205. Disposition of funds.

Publisher's Notes. Acts 1991, No. 1217, renamed the Arkansas State Board of Therapy Technology as the Arkansas State Board of Massage Therapy.

Cross References. Board members not to be held personally liable for actions as board members, § 17-80-103.

Effective Dates. Acts 1983, No. 131, § 6, and No. 135, § 6; Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies.

Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved

nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, Nos. 1461, § 23, and 1508, § 19: Apr. 15, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that this act is necessary to improve the functioning of the Arkansas State Board of Massage Therapy for the better regulation of the massage therapy

industry and for the better protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-86-201. Members.

(a)(1) The Arkansas State Board of Massage Therapy shall consist of seven (7) members, who shall be appointed by the Governor for a term of three (3) years.

(2)(A) Six (6) of the members shall be licensees under this chapter. These members shall be full voting members.

(B) Only two (2) of the members shall be owners of a massage therapy school.

(3) One (1) member, to represent the public, shall not be engaged in or retired from the practice of massage therapy. This member shall be a full voting member.

(4)(A) A board member shall begin his or her appointed term on July 1, 2009.

(B) Board members appointed to their positions shall be selected in equal apportionment from the congressional districts of the state as provided in § 25-16-801 and shall be subject to confirmation by the Senate.

(C) A board position becomes vacant immediately when the member filling that position moves to another state.

(D)(i) The initial terms of the appointed members of the board shall be determined by lot so that three (3) members have a three-year term, two (2) members have a two-year term, and two (2) members have a one-year term.

(ii) A person who has previously served on the board shall not be eligible for an initial appointment.

(5) Board members shall not serve more than six (6) consecutive years on the board.

(b) The Governor may remove members of the board from office according to § 25-16-804. The Governor shall fill any vacancy caused by the removal of any member of the board, by a member's resignation or death, or upon the expiration of a member's term.

(c)(1) Members shall be paid and receive a fee of no less than fifty dollars (\$50.00) per diem for each day actually engaged in attending board meetings or performing other official duties.

(2) All board members shall receive reimbursement for all reasonable and necessary travel at the rate approved for state employees. Lodging and other expenses incurred in the performance of their official duties will also be paid on the approved scale for state employees.

History. Acts 1981, No. 875, §§ 5, 6, 14; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 72-1205, 72-1206, 72-1214; Acts 1991, No. 1217, § 1; 1993, No. 250, § 158; 1993, No. 714, § 2; 1997, No. 250, § 158; 1997, No. 840, § 2; 1999, No. 1461, §§ 3, 4; 1999, No. 1508, § 7(q); 2009, No. 1305, § 2.

A.C.R.C. Notes. The operation of subsection (c) may be affected by the enact-

ment of Acts 1995, No. 1211, codified as § 25-16-901 et seq.

Publisher's Notes. The terms of the members of the Arkansas State Board of Massage Therapy other than the representative of the elderly, are arranged so that one term expires every year.

Amendments. The 2009 amendment rewrote (a).

17-86-202. Officers and employees.

(a)(1)(A) Arkansas State Board of Massage Therapy officers, elected by the board from among their own members, shall be a president, a vice president, and a secretary.

(B) Election of an officer or officers shall take place during a regularly scheduled board meeting or during a special nonconference call board meeting. An election to fill a vacancy in an elected office will take place during the first regularly scheduled meeting or during the first special nonconference call meeting immediately following the creation of the vacancy.

(2) Board officers may be removed from their elected offices for failure to fulfill the duties of their respective offices. Removal of such a board member from his or her elected office will be considered in an executive session as provided by § 25-19-106. The executive session will be called by the board during a regular or special nonconference call meeting. If a motion to remove the board member from his or her elected office is arrived at in the executive session, members will reconvene in accordance with § 25-19-106 in the public meeting to vote to remove the board member from his or her elected office.

(b) The board is authorized to employ an executive director, regular or special counsel, inspectors, clerks, secretaries, and other personnel as it may deem necessary to carry out the provisions of this chapter. At no time shall the executive director, counsel, inspectors, clerks, secretaries, and other personnel exceed ten (10) employees, and no employee of the board shall be a board member, related by blood or marriage to any member of the board, be an employee of a board member, or shall have any financial interest in the practice or instruction of massage therapy.

History. Acts 1981, No. 875, §§ 6, 14; 1991, No. 1217, § 1; 1997, No. 840, § 3; A.S.A. 1947, §§ 72-1206, 72-1214; Acts 1999, No. 1461, § 5.

17-86-203. Powers and duties.

(a)(1) The Arkansas State Board of Massage Therapy may promulgate and enforce reasonable rules for the purpose of carrying out this chapter.

(2) The Arkansas State Board of Massage Therapy shall follow the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as to “rule” and “rule-making” definitions and for the adoption and filing of rules.

(3) For the purpose of governing health and safety, the rules shall meet minimum requirements of the law and rules of the State Board of Health.

(b)(1)(A) The Arkansas State Board of Massage Therapy shall inspect or cause to be inspected at least one (1) time each year all massage therapy schools operated in this state.

(B) The Arkansas State Board of Massage Therapy and its agents and employees may enter and inspect any massage therapy clinic or school during any operating hours of the business.

(2) The Arkansas State Board of Massage Therapy and its agents and employees shall not request or be granted permission to enter any room of a massage therapy clinic or school in which a client is receiving treatment from a licensee under this chapter.

(c) The Arkansas State Board of Massage Therapy may hold licensing examinations from time to time at a place or places as the Arkansas State Board of Massage Therapy may designate.

(d)(1) The Arkansas State Board of Massage Therapy may require each original applicant and each upgrade applicant for a license issued by the Arkansas State Board of Massage Therapy to apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Arkansas State Police and the Federal Bureau of Investigation;

(2) The state and federal criminal background check shall conform to applicable federal standards and shall include the taking of fingerprints;

(3) The applicant shall sign a release of information to the Arkansas State Board of Massage Therapy and shall be responsible for the payment of any fees associated with the state and federal criminal background check;

(4)(A) Each applicant who has resided outside of Arkansas shall provide a state and federal criminal background check, including the taking of fingerprints, issued by the state or states in which the applicant resided.

(B) Results shall be sent directly to the Arkansas State Board of Massage Therapy from the agency performing the state and federal criminal background check.

(e)(1) For purposes of this section, an applicant is not eligible to receive or hold a license issued by the Arkansas State Board of Massage

Therapy if the applicant has pleaded guilty or nolo contendere to or been found guilty of a felony or Class A misdemeanor or any offense involving fraud, theft, or dishonesty.

(2) A provision of this section may be waived by the Arkansas State Board of Massage Therapy if:

(A) The conviction is for a Class A misdemeanor and:

(i) The completion of the applicant's sentence and probation or completion of the applicant's sentence or probation of the offense is at least three (3) years from the date of the application; and

(ii) The applicant has no criminal convictions during the three-year period; or

(B) The conviction is for a felony of any classification and:

(i) The completion of the applicant's sentence and probation or the completion of the applicant's sentence or probation of the offense is at least five (5) years from the date of the application; and

(ii) The applicant has no criminal convictions during the five-year period.

(f) The Arkansas State Board of Massage Therapy may permit an applicant to be licensed regardless of having been convicted of an offense listed in this section, upon making a determination that the applicant does not pose a risk of harm to any person served by the Arkansas State Board of Massage Therapy.

(g) In making a determination under subsection (f) of this section, the Arkansas State Board of Massage Therapy may consider the following factors:

(1) The nature and severity of the crime;

(2) The consequences of the crime;

(3) The number and frequency of crimes;

(4) The relationship between the crime and the health, safety, and welfare of persons served by the agency, such as:

(A) The age and vulnerability of victims of the crime;

(B) The harm suffered by the victim; and

(C) The similarity between the victim and persons served by the Arkansas State Board of Massage Therapy;

(5) The time elapsed without a repeat of the same or similar event;

(6) Documentation of successful completion of training or rehabilitation pertinent to the incident; and

(7) Any other information that bears on the applicant's ability to care for others or other relevant information.

(h) If the Arkansas State Board of Massage Therapy waives the provisions of subsection (e) of this section, the Arkansas State Board of Massage Therapy shall submit the reasons for waiving this provision in writing, and the determination and reasons shall be made available to review.

History. Acts 1981, No. 875, §§ 5, 6; 1997, No. 840, § 4; 1999, No. 1461, § 6; A.S.A. 1947, §§ 72-1205, 72-1206; Acts 2009, No. 1305, § 3.
1991, No. 1217, § 1; 1993, No. 714, § 3; **Amendments.** The 2009 amendment

substituted "Arkansas State Board of Massage Therapy" for "board" throughout (a) through (c) and made minor stylistic changes; inserted (a)(3); and added (d) through (h).

17-86-204. Records.

(a)(1) The Executive Director of the Arkansas State Board of Massage Therapy shall maintain a record book and computer file in which will be entered the names and addresses of all persons to whom licenses have been granted under this chapter, the license number, and the dates of granting such licenses and renewals thereof, and other matters of record.

(2) The executive director will move to a separate book and file the records of all persons who have died, have let their licenses lapse for three (3) years, whose licenses have been suspended or revoked by the Arkansas State Board of Massage Therapy, or cancelled by the licensee.

(b) The record books and computer files so provided and maintained shall be deemed and considered a book of records and files of records, and they will be kept in a timely manner. A transcript of any record therein or a license number or date of granting such a license to a person charged with a violation of any of the provisions of this chapter shall be admitted as evidence in any of the courts of this state if certified under the hand of the executive director.

(c) The original books, records, and papers of the board shall be maintained at the offices of the board.

(d) Copies of records may be furnished to any person requesting them upon payment of such copying fee as the board may require and as Arkansas state laws and regulations permit. However, licensing exams shall be exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1981, No. 875, § 13; 1217, § 1; 1997, No. 840, § 5; 1999, No. A.S.A. 1947, § 72-1213; Acts 1991, No. 1461, § 7.

17-86-205. Disposition of funds.

(a) All moneys remitted to the Arkansas State Board of Massage Therapy under this chapter shall be accepted in the form of cashiers checks or money orders and made payable to the Arkansas State Board of Massage Therapy. The Executive Director of the Arkansas State Board of Massage Therapy shall deposit all such funds received in a timely manner in accordance with laws of the State of Arkansas and regulations of the Department of Finance and Administration.

(b) All salaries and expenses of the board shall be paid from funds created by the various fees charged by and remitted to the board under the provisions of this chapter.

History. Acts 1981, No. 875, §§ 14, 15; 1991, No. 1217, § 1; 1997, No. 840, § 6; A.S.A. 1947, §§ 72-1214, 72-1215; Acts 1999, No. 1461, § 8.

SUBCHAPTER 3 — REGISTRATION

SECTION.

- 17-86-301. Registration required — Exemptions.
- 17-86-302. Sanitary requirements.
- 17-86-303. Massage therapist.
- 17-86-304. Master massage therapist.
- 17-86-305. Massage therapy instructor.
- 17-86-306. Massage therapy school.
- 17-86-307. Massage therapy clinic.
- 17-86-308. Reciprocity.

SECTION.

- 17-86-309. Renewals — Inactive list — Continuing education.
- 17-86-310. Display of license.
- 17-86-311. Disciplinary actions and penalties.
- 17-86-312. Fees.
- 17-86-313. Grandfather clause — Ability to upgrade status.

Cross References. Continuing education requirements, § 17-80-104.

Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1999, No. 1461, § 23: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act is necessary to improve the functioning of the Arkansas State Board of Massage Therapy for the better regulation of the massage therapy industry and for the better protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is

vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 1305, § 13: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act is necessary to improve the operations of the Arkansas State Board of Massage Therapy, to improve the regulation of the massage therapy industry, and for the immediate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

17-86-301. Registration required — Exemptions.

(a) It shall be unlawful:

(1)(A) For any person who does not hold a valid license to use the following titles: massage therapist, massage practitioner, myotherapist, masso therapist, massage technologist, masseur, masseuse, therapy technologist, master massage therapist, massage therapy instructor, or any derivation of those titles or to advertise such titles; or

(B) For any person who does not hold the applicable license issued by the Arkansas State Board of Massage Therapy to engage professionally for payment, barter, donation, or exchange in the practice or instruction of massage therapy as defined in this chapter;

(2) For any person to operate or conduct any massage therapy clinic or massage therapy school which does not conform to the sanitary regulations contained in § 17-86-302, in state law, in local ordinances, or in those rules and regulations which may be adopted by the board;

(3) To employ any person to practice or instruct under this chapter who does not hold a valid license issued by the board;

(4) For any person to operate a massage therapy school or clinic without its first being registered under the provisions of this chapter as a licensed massage therapy school or registered clinic; or

(5) For the board or other individual or entity to incorporate privileges or certification requirements of any private organization, private professional association, or private accrediting agency within Arkansas massage laws or its rules and regulations. However, the board may adopt as its licensure exam an exam drafted and administered by a private organization, private professional association, or private accreditation agency.

(b) Exemptions:

(1) Persons authorized by the laws of this state to practice medicine, osteopathy, podiatry, or physical therapy, and licensed physicians' assistants, licensed nurses, licensed physical therapy assistants, licensed acupuncturists, licensed midwives, and chiropractors are exempt from this chapter in so far as massage therapy practices are offered or instructed within the scope and under the provisions of licensure;

(2) Persons authorized by the board to present and instruct board-approved school curriculum or continuing education programs, or both, may present and instruct such board-approved curriculum and programs for payment and in the presentation and instruction may utilize practices defined in, but without being licensed or registered under, the provisions of this chapter; and

(3) The practice of massage therapy that is incidental to a program of study by students enrolled in a licensed massage therapy school approved by the board, and under direct supervision of a licensee employed as an instructor at the school, is exempt from § 17-86-311(a)(10).

(c)(1) A licensee shall notify the board in writing of any change of name, address, phone number, or place of employment.

(2) If a name change is requested, a new license shall be issued in the new name at the next renewal date or immediately for a fee not to exceed twenty dollars (\$20.00) for printing of a new license.

(3) Valid government-issued photo identification is required for each name change request.

History. Acts 1981, No. 875, §§ 3, 4; A.S.A. 1947, §§ 72-1203, 72-1204; Acts 1991, No. 1217, § 1; 1993, No. 714, § 4; 1995, No. 466, § 1; 1997, No. 840, § 7; 1999, No. 1461, § 9; 2009, No. 1305, § 4.

Amendments. The 2009 amendment added (c).

CASE NOTES

Unregistered Employees.

Former similar statute did not make it unlawful to employ a person as a masseur or masseuse who did not hold a certificate of registration but merely made it unlawful to employ any person as an “operator”

of a massage establishment or as an “instructor” in a massage school if the person did not hold a certificate of registration. *Ladwig v. Arlington Hotel Co.*, 225 Ark. 972, 286 S.W.2d 853 (1956) (decision under prior law).

17-86-302. Sanitary requirements.

(a) It shall be unlawful for any person or school to be licensed or any clinic to be operated under the provisions of this chapter unless the following requirements are met and practiced:

(1) A sink for hand washing with hot and cold running water and soap must be accessible;

(2) A restroom must be accessible;

(3) A towel or sheet that has been used by one (1) client may not be used on another person unless the towel or sheet has been relaundered;

(4) Anyone who has any infectious, contagious, or communicable disease which may be spread by airborne, droplet, contact, or indirect methods and who is in contact with the public must not practice until all risk of disease transmission is cleared. Any employee with such a disease must be immediately relieved from duty until all risk of disease transmission is cleared;

(5) A school or clinic must be equipped with a massage table or tables or a massage chair or chairs or equipped with such standard equipment dictated by the practice engaged in as defined in § 17-86-102; and

(6) A clinic or school must comply with all requirements of the Department of Health, city ordinances, and state laws.

(b) Failure to comply with any of the requirements as set forth by this section will be grounds for suspension or revocation of license.

History. Acts 1981, No. 875, § 11; 1217, § 1; 1993, No. 714, § 5; 1997, No. A.S.A. 1947, § 72-1211; Acts 1991, No. 840, § 8; 1999, No. 1461, § 10.

17-86-303. Massage therapist.

(a) In order to be licensed as a massage therapist, the person seeking licensure shall:

(1) Furnish to the Arkansas State Board of Massage Therapy satisfactory proof that he or she is eighteen (18) years of age or older and of good moral character;

(2) Make oath that he or she has not been convicted of or found guilty of or entered a plea of guilty or nolo contendere to any offense that would constitute a felony or constitute the offense of prostitution, either in this state or the United States, and submit a signed authorization to investigate and have information released to the board;

(3) Present a high school diploma, graduate equivalency diploma, or college transcript and credentials issued by a board-accepted massage

therapy school or a like institution with no fewer than five hundred (500) in-classroom hours of instruction;

(4) Furnish to the board satisfactory proof of passing an examination recognized and approved by the board;

(5) Present a negative test for tuberculosis. The tuberculosis test must be current at the time of licensure; and

(6) Pay the specified fees, which shall accompany a completed notarized application to the board.

(b) Fees are as follows:

- (1) Application fee\$75.00
- (2) Original license fee80.00
- (3) Biennial renewal80.00
- (4) Examination fee or reexamination fee25.00
- (5) Duplicate license fee10.00
- (6) Pocket card fee not to exceed ten dollars10.00

(c) A person shall not practice massage therapy until his or her official license has been received from the board.

(d) A person who attempts to procure or does procure a license in violation of this section shall be subject to the penalties provided for in § 17-86-103.

History. Acts 1981, No. 875, §§ 7, 9; A.S.A. 1947, §§ 72-1207, 72-1209; Acts 1991, No. 1217, § 1; 1993, No. 714, § 6; 1993, No. 1219, § 26; 1997, No. 840, § 9; 1999, No. 1461, § 11; 2009, No. 1305, § 5.

Amendments. The 2009 amendment rewrote (a)(5) and (b); added present (c) and redesignated the subsequent subsection accordingly; and made a minor stylistic change in (d).

17-86-304. Master massage therapist.

(a) Any person who holds a license as a massage therapist issued by the Arkansas State Board of Massage Therapy and who submits satisfactory evidence to the board that he or she has completed and meets the requirements stated in § 17-86-102(3) is entitled to be upgraded to master massage therapist.

(b) Each application for upgrade to master massage therapist shall be considered a new application for purposes of criminal background checks.

(c) Fees are as follows:

- (1) Application fee\$75.00
- (2) Original license fee80.00
- (3) Biennial renewal fee80.00
- (4) Duplicate license fee10.00
- (5) Pocket card fee not to exceed ten dollars10.00

History. Acts 1981, No. 875, §§ 7, 9; A.S.A. 1947, §§ 72-1207, 72-1209; Acts 1991, No. 1217, § 1; 1993, No. 714, § 7; 1997, No. 840, § 10; 1999, No. 1461, § 12; 2009, No. 1305, § 6.

Amendments. The 2009 amendment made a minor stylistic change in (a); inserted (b) and redesignated the subsequent subsection accordingly; and rewrote (c).

17-86-305. Massage therapy instructor.

(a) Any person who holds a license as a master massage therapist issued by the Arkansas State Board of Massage Therapy and who submits satisfactory evidence to the board that he or she has successfully completed and meets the requirements stated in § 17-86-102(8) shall be entitled to be upgraded to massage therapy instructor.

(b) Each application for upgrade to massage therapy instructor is considered a new application for purposes of criminal background checks.

(c) Fees are as follows:

(1) Application fee	\$75.00
(2) Original license fee	80.00
(3) Biennial renewal fee	80.00
(4) Duplicate license fee	10.00
(5) Pocket card fee not to exceed ten dollars	10.00

History. Acts 1981, No. 875, §§ 7, 9; A.S.A. 1947, §§ 72-1207, 72-1209; Acts 1991, No. 1217, § 1; 1993, No. 714, § 8; 1997, No. 840, § 11; 1999, No. 1461, § 13; 2009, No. 1305, § 7.

Amendments. The 2009 amendment inserted “therapy” preceding “instructor” in (a); inserted (b) and redesignated the subsequent subsection accordingly; and rewrote (c).

17-86-306. Massage therapy school.

(a) A person shall not establish, operate, or maintain a massage therapy school without first having obtained a certificate of massage therapy school licensure issued by the Arkansas State Board of Massage Therapy.

(b) A massage therapy school shall not be approved by the board or granted a certificate of licensure until the appropriate application and inspection forms as prescribed by the board have been completed and approved and the licensure fee has been paid.

(c)(1) Inspection of the school premises will be made by a board member and required forms completed and returned to the Executive Director of the Arkansas State Board of Massage Therapy with approval or recommendations.

(2) Should the school facilities not pass the first inspection and, after recommendations, failures are corrected, a second inspection will be made within thirty (30) days to determine the school’s eligibility.

(d)(1) Schools shall require a physical examination by a medical doctor that the student poses no health risk to give and receive massage and a tuberculosis test verifying that the licensee is free from contagious tuberculosis.

(2) The school shall be required to maintain proof of the examination and the tuberculosis test and furnish additional information and documents as may be required by the board or its appointee during the inspection.

(e) The board may certify the school and provide for licensure thereof if the school follows a curriculum approved by the board consisting of

not fewer than five hundred (500) hours of in-classroom instruction over a term of not fewer than four (4) months consisting of the following subjects:

- (1) One hundred seventy-five (175) hours of anatomy, physiology, pathology, and contraindications to massage therapy;
- (2) Two hundred twenty-five (225) hours of technique;
- (3) Twenty-five (25) hours of hydrotherapy, electrotherapy, and heliotherapy;
- (4) Twenty-five (25) hours of hygiene and infection control;
- (5) Twenty-five (25) hours of massage therapy law, business management, and professional ethics; and
- (6) Twenty-five (25) hours of related subjects as approved by the board.

(f)(1) The fee for establishing a school shall not exceed one thousand dollars (\$1,000).

(2) The initial inspection fee for each school shall not exceed one hundred dollars (\$100).

(3) The annual renewal and inspection fee for each school shall not exceed one hundred dollars (\$100).

(g) The curriculum established in subsection (e) of this section shall be followed for all massage therapy programs.

History. Acts 1981, No. 875, § 8; A.S.A. 1947, § 72-1208; Acts 1991, No. 1217, § 1; 1993, No. 714, § 9; 1997, No. 840, § 12; 1999, No. 1461, § 14; 2009, No. 1305, § 8.

A.C.R.C. Notes. As enacted by Acts 1999, No. 1461, § 14, subsection (g) origi-

nally ended: “beginning on or after July 1, 1999”.

Amendments. The 2009 amendment inserted “massage therapy” following “certificate of” in (a); rewrote (d) and (f); and made minor stylistic changes.

17-86-307. Massage therapy clinic.

(a) No person may establish, maintain, or operate a massage therapy clinic until the address and telephone number of the office or clinic has been supplied in writing to the Arkansas State Board of Massage Therapy.

(b) In the event a massage therapy clinic moves to a new location or changes its phone number, the new address or phone number, or both, will be immediately submitted to the board in writing prior to operating the clinic at the new address.

History. Acts 1981, No. 875, § 8; A.S.A. 1947, § 72-1208; Acts 1991, No. 1217, § 1;

1993, No. 714, § 10; 1997, No. 840, § 13; 1999, No. 1461, § 15.

17-86-308. Reciprocity.

(a) The Arkansas State Board of Massage Therapy may enter into reciprocal relations with other states and territories whose licensure requirements are substantially the same as those provided in this chapter.

(b)(1) An out-of-state applicant holding a current massage therapy license issued by another state and after receiving an Arkansas

massage therapy license may apply for an upgrade to master massage therapist or massage therapy instructor by providing appropriate continuing education credits and experience gained before Arkansas licensure for board approval.

(2) An upgrade request shall be made by submitting a complete application package and paying the fees required by this chapter.

History. Acts 1981, No. 875, § 17; A.S.A. 1947, § 72-1217; Acts 1991, No. 1217, § 1; 1993, No. 714, § 11; 1997, No. 840, § 14; 1999, No. 1461, § 16; 2009, No. 1305, § 9.

Amendments. The 2009 amendment added (b) and redesignated the existing text accordingly; and made a minor stylistic change in (a).

17-86-309. Renewals — Inactive list — Continuing education.

(a)(1) Each license for licensees is valid for a period of two (2) years and expires on the birthdate of the licensee in the biennial renewal year, whereupon a renewal license may be issued upon submission of completed license renewal application with payment of the fee or fees prescribed for class of certification.

(2) Each license for a massage therapy school is valid for a period of one (1) year and expires on June 30 of each year, whereupon a renewal license may be issued upon submission of a completed license renewal application with payment of the fee or fees prescribed for class of certification.

(3) Every license for licensees, both active and inactive, shall expire on the birthdate of the licensee in the biennial renewal year.

(4) Each renewal for licensees shall be accompanied by proof of no fewer than eighteen (18) hours of continuing education that have been approved by the Arkansas State Board of Massage Therapy.

(b) A renewal application for a licensee is due on or before the first day of the month preceding the month of the birthdate of the licensee in the biennial renewal year.

(c) A renewal application for a licensee postmarked after the first day of the month preceding the month of the birthdate of the licensee of the biennial renewal year shall be levied a late penalty fee not to exceed twenty-five dollars (\$25.00).

(d)(1) An application for renewal postmarked after the birthdate of the licensee in the biennial renewal year will be treated as an application to renew an expired license.

(2)(A) A license is expired if the application is postmarked after the birthdate of the licensee in the biennial renewal year.

(B) Before the board issues a new license to an applicant whose license has expired under subdivision (d)(2)(A) of this section, the applicant shall:

(i) Submit a new application that requires the applicant to meet current requirements; and

(ii) Successfully complete an examination recognized by the board.

(e) The board shall issue a license effective as of the date of receipt of the late application and all renewal fees, penalties, and required documentation.

(f)(1) Any individual licensee who is not currently in practice and who wishes to place his or her license on the inactive list may remain on this list for a period not to exceed four (4) years without reexamination.

(2) After the time allowed under subdivision (f)(1) of this section, all inactive licensees shall meet current requirements for licensure and must successfully complete an examination recognized by the board before resuming the active practice of massage therapy.

(g) Any individual licensee who has been placed on the inactive list for fewer than four (4) years and who wishes to reactivate his or her license shall follow the procedures for license renewal as provided for in this section, present satisfactory evidence of completion of continuing education hours as required by subsection (a) of this section for the inactive period, and pay all appropriate fees before resuming the active practice of massage therapy.

(h) The fee for placement on the inactive list shall not exceed eighty dollars (\$80.00) per biennium.

(i)(1) A licensee whose massage therapy school license renewal is postmarked after April 30 of each year shall pay a late fee not to exceed five hundred dollars (\$500).

(2) A massage therapy school license renewal postmarked after June 30 of each year automatically expires.

(3) A licensee whose massage therapy school license has expired shall submit a new application to the board with current requirements and fees.

(j)(1) Each application for continuing education programs shall be accompanied by an application fee not to exceed forty dollars (\$40.00).

(2)(A) A licensee residing out of state and holding a valid Arkansas massage therapy license may request board approval of appropriate continuing education courses otherwise not approved by the board.

(B) Courses shall meet similar standards as courses approved by the board.

(C) Proof of residency shall accompany the request.

History. Acts 1981, No. 875, §§ 9, 10; A.S.A. 1947, §§ 72-1209, 72-1210; Acts 1991, No. 1217, § 1; 1993, No. 714, § 12; 1997, No. 840, § 15; 1999, No. 1461, § 17; 2009, No. 1305, § 10.

Amendments. The 2009 amendment rewrote the section and added "Continuing education" to the section heading.

17-86-310. Display of license.

(a) An official license shall be conspicuously and publicly displayed in the place where the holder engages in the practice of massage therapy or instruction of massage therapy. A massage therapy school license shall be conspicuously displayed in the massage therapy school.

(b) It is unlawful to tamper with or reduce in size an original massage therapy license issued by the Arkansas State Board of Massage Therapy.

(c) Each license shall provide the correct address of the board.

History. Acts 1981, No. 875, § 10; A.S.A. 1947, § 72-1210; Acts 1991, No. 1217, § 1; 1993, No. 714, § 13; 1997, No. 840, § 16; 1999, No. 1461, § 18; 2009, No. 1305, § 11.

Amendments. The 2009 amendment, in (a), inserted “and publicly” in the first sentence and rewrote the second sentence; inserted (b); and redesignated the subsequent subsection accordingly.

17-86-311. Disciplinary actions and penalties.

(a) The Arkansas State Board of Massage Therapy may deny, suspend, or revoke a license upon any one (1) of the following grounds:

(1) Conviction of or finding of guilt or entry of a plea of guilty or nolo contendere to a felony, Class A misdemeanor, or prostitution;

(2) Malpractice or gross incompetency;

(3) The use in advertisements of untruthful or improbable statements or flamboyant, exaggerated, or extravagant claims concerning the licensee’s professional excellence or abilities;

(4) Habitual drunkenness or habitual use of any illegal drugs;

(5) Serving or having a permit to serve alcoholic beverages at the clinic or school;

(6) Engaging in moral turpitude or immoral or unprofessional conduct;

(7) Failure to comply with any valid regulation or order of the board;

(8) Invasion of the field of practice of any profession for which a license is required, the diagnosis of ailments, diseases, or injuries of human beings, the performance of osseous adjustments, prescription of medications, or other breaches of the scope of practice of massage therapy;

(9) Failure of any licensee to comply with the provisions of this chapter; or

(10) Failure to have licensed personnel to perform massage therapy techniques in his or her clinic or school.

(b)(1) The board shall establish by rule the penalty system to be imposed under this section.

(2) Whenever the board finds that the holder of a license, certificate of registration, or other permit issued by the board is guilty of a violation of the rules of the board or the laws of the state pertaining to any occupation, profession, or business licensed or regulated by the board, the board may impose a penalty on the licensee or permit holder in lieu of suspension or revocation of license, certificate of registration, or other permit.

(3)(A) Upon imposition of a penalty in lieu of suspension or revocation of license, certificate of registration, or other permit, the board may require that the licensee or permit holder pay a penalty to the board.

(B) The license, certificate of registration, or permit shall be suspended until the penalty is paid.

(4)(A) The penalty may be imposed in lieu of revocation or suspension of a license, certificate, or other permit only if the board formally finds that the public health, safety, welfare, and morals would not be impaired and that the payment of the penalty will achieve the desired disciplinary results.

(B) The minimum penalty imposed by the board in lieu of revocation or suspension of a license, certificate, or other permit shall be twenty-five dollars (\$25.00) and the maximum penalty one thousand dollars (\$1,000) per infraction.

(C) The authority of the board to impose penalties under this section is not affected by any other civil or criminal proceeding concerning the same violation.

(D) A person penalized by the board under this chapter may appeal any order of the board in the manner currently provided by law.

(E) In addition to any other sanctions authorized by this chapter, the board may impose a civil penalty as provided in this subsection against any unlicensed person, firm, or corporation practicing or offering to practice any actions requiring licensure under this chapter.

(c)(1) The board shall revoke the license of a person who engages in the practice of massage of the anus or the genital area of another person.

(2) The board shall revoke the license of a person who engages in the practice of massage of the breasts unless the massage therapist:

(i) Engages in the practice of massage of the breasts for therapeutic and medical purposes including without limitation the reduction of scar tissue following a surgery on the breast, release of myofascial binding, or improving lymphatic flow; and

(ii) Has received at least forty-eight (48) hours of continuing education credits in lymphatic massage, myofascial massage, or oncology massage.

(3) A revocation of a license under subdivisions (c)(1) and (2) of this section shall be for a period of three (3) years.

(d)(1) Charges may be brought by any person, or the board on its own motion may direct the Executive Director of the Arkansas State Board of Massage Therapy to prefer charges.

(2) Any accusation of any of the offenses enumerated in this section may be filed with the executive director. The accusations shall be in writing, signed by the accuser, and verified under oath.

(e) In denying, suspending, or revoking any license, the board shall afford any party review as provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and as otherwise provided by the rules and regulations of the board.

History. Acts 1981, No. 875, § 12; A.S.A. 1947, § 72-1212; Acts 1991, No. 1217, § 1; 1993, No. 714, § 14; 1997, No. 840, § 17; 1999, No. 1461, § 19; 2009, No. 1305, § 12.

Amendments. The 2009 amendment inserted "Class A misdemeanor" in (a)(1) and made a related change; inserted (b) and (c); and redesignated the remaining subsections accordingly.

17-86-312. Fees.

All registration fees and other fees due the Arkansas State Board of Massage Therapy shall be paid in accordance with the provisions of this chapter and all other laws and regulations of this state.

History. Acts 1981, No. 875, § 9; A.S.A. 1947, § 72-1209; Acts 1991, No. 1217, § 1; 1997, No. 840, § 18.

17-86-313. Grandfather clause — Ability to upgrade status.

(a)(1) In the event the qualifications for a specific license are increased or changed, a person holding a particular license from the Arkansas State Board of Massage Therapy may continue to hold that license or may upgrade from massage therapist to master massage therapist or from master massage therapist to massage therapy instructor, without meeting current requirements for the particular license the person held at the time of the increase or change.

(2) It is the express intent of the legislature that in the event the qualifications for a specific license are increased or changed, that those persons who hold the license or licenses will be able to hold that specific license or upgrade licensure status without completing current requirements for the license held at the time of the increase or change.

History. Acts 1997, No. 840, § 19.

CHAPTER 87

NURSES

SUBCHAPTER

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF NURSING.
3. LICENSING.
4. EDUCATIONAL PROGRAMS.
5. NURSE MIDWIVES. [REPEALED.]
6. NURSE LICENSURE COMPACT.
7. MEDICATION ASSISTIVE PERSONS.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-86-101 et seq.

RESEARCH REFERENCES

ALR. Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Liability for incorrectly diagnosing existence or nature of pregnancy. 2 A.L.R.5th 796.

Liability of hospital, physician, or other medical personnel for death or injury to child caused by improper post-delivery diagnosis, care, and representation. 2 A.L.R.5th 811.

Liability of physician, nurse, or hospital for failure to contact physician or to keep physician sufficiently informed concerning status of mother during pregnancy, labor and childbirth. 3 A.L.R.5th 123.

Liability of hospital, physician, or other medical personnel for death or injury to mother or child caused by inadequate attendance or monitoring of patient during and after pregnancy, labor, and delivery. 3 A.L.R.5th 146.

Liability of doctor or other health practitioner to third party contracting contagious disease from doctor's patient 3 A.L.R.5th 370.

Liability of hospital, physician, or other medical personnel for death or injury to mother or child caused by improper treatment during labor. 6 A.L.R.5th 490.

Liability of hospital, physician, or other medical personnel for death or injury to mother caused by improper post-delivery diagnosis, care and representations. 6 A.L.R.5th 534.

Who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice. 12 A.L.R.5th 1.

Claimant's eligibility for unemployment compensation as affected by loss of, or failure to obtain, license, certificate, or similar qualification for continued employment. 15 A.L.R.5th 653.

Allowance of punitive damages in medical malpractice actions. 35 A.L.R.5th 145.

Valuing damages in personal injury actions awarded for gratuitously rendered nursing and medical care. 49 A.L.R.5th 685.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., § 7 and § 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

U. Ark. Little Rock L.J. Lisk, A Physician's Respondeat Superior Liability for the Negligent Acts of Other Medical Professionals — When the Captain Goes Down Without the Ship, 13 U. Ark. Little Rock L.J. 183.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-87-101. License required — Purpose.

17-87-102. Definitions.

17-87-103. Exceptions.

SECTION.

17-87-104. Penalty.

17-87-105. Injunction.

17-87-106. Construction of chapter.

Effective Dates. Acts 1971, No. 432, § 22: Mar. 29, 1971. Emergency clause provided: "Whereas, the business of the Board of Psychiatric Technicians for Arkansas (Acts 1953, No. 124), herein replaced by the Arkansas State Board of Nursing, is conducted on a fiscal year basis beginning May 1, and, to be effective, the provisions of this act shall be

enforced prior to that date, an emergency, therefore, is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 613, § 5: Mar. 28, 1979. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that the role of registered nurse practitioner is not clearly defined by the present laws of this state governing the licensing and registration of nurses; that legal recognition of the purpose and role of a registered nurse practitioner is necessary to encourage persons who are qualified to be registered nurses to take the educational training to become registered nurse practitioners and to amend the laws of this state to authorize the appropriate issuance of registered nurse practitioner licenses to persons possessing the qualifications provided therefor; and that the immediate passage of this act is necessary to accomplish said purposes and to improve the health delivery services to people in this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 14, § 8: Jan. 25, 1980. Emergency clause provided: "It is hereby found and determined by the Arkansas General Assembly that the existing law authorizing the practice of nurse anesthesia is inadequate, that this act is necessary to provide an adequate number of qualified personnel who can administer anesthesia, and that without this act the hospitals of this state will face crucial shortages in the number of

certified personnel necessary to administer anesthetics. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 189, § 3: Feb. 26, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the compensation authorized by law for members of the State Board of Nursing is inadequate to compensate the members of such board for the time and duties performed in essential board services; that the Nurse Practices Act does not allow nurses licensed in other states, territories or foreign countries who are engaged in transporting patients into and out of, or through, this state to engage in nursing duties without obtaining an Arkansas nurse's license; that such practice is in need of clarification in order that such persons may engage in such essential duties during transporting of patients in this state for periods not to exceed 48 hours; and that the immediate passage of this act is necessary to clarify and correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

17-87-101. License required — Purpose.

(a) In order to safeguard life and health, any person practicing or offering to practice nursing for compensation shall be required to submit evidence that he or she is qualified to so practice and shall be licensed as provided in this chapter:

- (1) Professional nursing;
- (2) Advanced practice nursing;
- (3) Registered practitioner nursing;
- (4) Practical nursing; or
- (5) Psychiatric technician nursing.

(b) It shall be unlawful for any person not licensed by the board:

(1) To practice or offer to practice professional nursing, advanced practice nursing, registered practitioner nursing, practical nursing, or psychiatric technician nursing; or

(2) To use any sign, card, or device to indicate that the person is a professional registered nurse, an advanced practice nurse, a registered

nurse practitioner, a licensed practical nurse, or a licensed psychiatric technician nurse.

History. Acts 1971, No. 432, § 1; 1979, § 1; A.S.A. 1947, § 72-745; Acts 1995, No. 613, § 1; 1980 (1st Ex. Sess.), No. 14, 409, § 1.

17-87-102. Definitions.

As used in this chapter:

- (1) "Board" means the Arkansas State Board of Nursing;
- (2) "Collaborative practice agreement" means a written plan that identifies a physician who agrees to collaborate with an advanced practice nurse in the joint management of the health care of the advanced practice nurse's patients, and outlines procedures for consultation with or referral to the collaborating physician or other health care professionals as indicated by a patient's health care needs;
- (3) "Consulting physician" means a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., with obstetrical privileges in a hospital, who has agreed to practice in consultation with a certified nurse midwife;
- (4)(A) "Practice of advanced practice nursing" means the delivery of health care services for compensation by professional nurses who have gained additional knowledge and skills through successful completion of an organized program of nursing education that certifies nurses for advanced practice roles as advanced nurse practitioners, certified nurse anesthetists, certified nurse midwives, and clinical nurse specialists.
- (B)(i) "Practice of advanced nurse practitioner nursing" means the performance for compensation of nursing skills by a registered nurse who, as demonstrated by national certification, has advanced knowledge and practice skills in the delivery of nursing services.
- (ii) "Practice of certified registered nurse anesthesia" means the performance for compensation of advanced nursing skills relevant to the administration of anesthetics under the supervision of, but not necessarily in the presence of, a licensed physician, licensed dentist, or other person lawfully entitled to order anesthesia. A certified registered nurse anesthetist may order nurses, within their scope of practice, to administer drugs preoperatively and postoperatively in connection with an anesthetic or other operative or invasive procedure, or both, that will be or has been provided.
- (iii) "Practice of clinical nurse specialist nursing" means the performance for compensation of nursing skills by a registered nurse who, through study and supervised practice at the graduate level and as evidenced by national certification, has advanced knowledge and practice skills in a specialized area of nursing practice;
- (iv) "Practice of nurse midwifery" means the performance for compensation of nursing skills relevant to the management of women's health care, focusing on pregnancy, childbirth, the postpartum

period, care of the newborn, family planning, and gynecological needs of women, within a health care system that provides for consultation, collaborative management, or referral as indicated by the health status of the client;

(5) "Practice of practical nursing" means the performance for compensation of acts involving the care of the ill, injured, or infirm or the delegation of certain nursing practices to other personnel as set forth in regulations established by the board under the direction of a registered professional nurse, an advanced practice nurse, a licensed physician, or a licensed dentist, which acts do not require the substantial specialized skill, judgment, and knowledge required in professional nursing;

(6) "Practice of professional nursing" means the performance for compensation of any acts involving:

(A) The observation, care, and counsel of the ill, injured, or infirm;

(B) The maintenance of health or prevention of illness of others;

(C) The supervision and teaching of other personnel;

(D) The delegation of certain nursing practices to other personnel as set forth in regulations established by the board; or

(E) The administration of medications and treatments as prescribed by practitioners authorized to prescribe and treat in accordance with state law when such acts require substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social sciences;

(7) "Practice of psychiatric technician nursing" means the performance for compensation of acts involving the care of the physically and mentally ill, retarded, injured, or infirm or the delegation of certain nursing practices to other personnel as set forth in regulations established by the board, and the carrying out of medical orders under the direction of a registered professional nurse, an advanced practice nurse, a licensed physician, or a licensed dentist, when such activities do not require the substantial specialized skill, judgment, and knowledge required in professional nursing; and

(8)(A) "Practice of registered nurse practitioner nursing" means the delivery of health care services for compensation in collaboration with and under the direction of a licensed physician or under the direction of protocols developed with a licensed physician.

(B) Registered nurse practitioners shall be authorized to engage in activities as recognized by the nursing profession and as authorized by the board.

(C) Nothing in this subdivision (8) is to be deemed to limit a registered nurse practitioner from engaging in those activities which normally constitute the practice of nursing, or those which may be performed by persons without the necessity of the license to practice medicine.

Cross References. Lay midwives,
§ 17-85-101 et seq.

CASE NOTES

Practice of Professional Nursing.

Actions of defendant went beyond the practice of professional nursing. Arkansas State Medical Bd. v. Grimmer, 250 Ark. 1, 463 S.W.2d 662 (1971) (decision under prior law).

Cited: Arkansas State Nurses Ass'n v. Arkansas State Medical Bd., 283 Ark. 366, 677 S.W.2d 293 (1984).

17-87-103. Exceptions.

This chapter does not prohibit:

- (1) The furnishing of nursing assistance in an emergency;
- (2) The practice of nursing that is incidental to their program of study by students enrolled in nursing education programs approved by the Arkansas State Board of Nursing;
- (3) The practice of any legally qualified nurse of another state who is employed by the United States Government or any bureau, division, or agency while in the discharge of his or her official duties in installations where jurisdiction has been ceded by the State of Arkansas;
- (4) The practice of any legally qualified and licensed nurse of another state, territory, or foreign country whose responsibilities include transporting patients into, out of, or through this state while actively engaged in patient transport that does not exceed forty-eight (48) hours in this state;
- (5) Nursing or care of the sick when done in connection with the practice of the religious tenets of any church by its adherents;
- (6) The care of the sick when done in accordance with the practice of religious principles or tenets of any well-recognized church or denomination that relies upon prayer or spiritual means of healing;
- (7) The administration of anesthetics under the supervision of, but not necessarily in the presence of, a licensed physician, dentist, or other person lawfully entitled to order anesthesia by a graduate nurse anesthetist awaiting certification results while holding a temporary permit;
- (8) The administration of anesthetics under the supervision of, but not necessarily in the presence of, a licensed physician, dentist, or other person lawfully entitled to order anesthesia by a registered nurse who is enrolled as a bona fide student pursuing a course in a nurse anesthesia school that is approved by a nationally recognized accrediting body and whose graduates are acceptable for certification by a nationally recognized certifying body, provided the giving or administering of the anesthetics is confined to the educational requirements of the course and under the direct supervision of a qualified instructor;
- (9) Hospital-employed professional paramedics from administering medication for diagnostic procedures under the direction of a physician;
- (10) The prescription and administration of drugs, medicines, or therapeutic devices in the presence of and under the supervision of an

advanced practice nurse holding a certificate of prescriptive authority, a licensed physician, or licensed dentist by a registered nurse who is enrolled as a student in an advanced pharmacology course, provided the prescription or administration of drugs or medicines, or both, is confined to the educational requirements of the course and under the direct supervision of a qualified instructor; or

(11)(A) Health maintenance activities by a designated care aide for a:

(i) Competent adult at the direction of the adult; or

(ii) Minor child or incompetent adult at the direction of a caretaker.

(B) As used in this section:

(i) "Caretaker" means a person who is:

(a) Directly and personally involved in providing care for a minor child or incompetent adult; and

(b) The parent, foster parent, family member, friend, or legal guardian of the minor child or incompetent adult receiving care under subdivision (11)(B)(i)(a) of this section;

(ii) "Competent adult" means an individual who:

(a) Is eighteen (18) years of age or older; and

(b) Has the capability and capacity to make an informed decision; and

(iii) "Health maintenance activities" means activities that:

(a) Enable a minor child or adult to live in his or her home; and

(b) Are beyond activities of daily living that:

(1) The minor child or adult is unable to perform for himself or herself; and

(2) The attending physician, advanced practice nurse, or registered nurse determines can be safely performed in the minor child's or adult's home by a designated care aide under the direction of a competent adult or caretaker.

(C) As used in this section, "home" does not include:

(i) A nursing home;

(ii) An assisted living facility;

(iii) A residential care facility;

(iv) An intermediate care facility; or

(v) A hospice care facility.

(D) The board with the input of the Home Health Care Service Agency Advisory Council, the Arkansas Health Care Association, and the Arkansas Residential Assisted Living Association shall promulgate rules specifying which health maintenance activities are not exempted under this subdivision (11) and the minimal qualifications required of the designated care aide.

History. Acts 1971, No. 432, §§ 1, 2, 17; 745, 72-746, 72-761; Acts 1995, No. 409, 1979, No. 404, §§ 1, 7; 1979, No. 613, § 3; 1997, No. 1065, § 2; 2005, No. 1440, §§ 1, 2; 1980 (1st Ex. Sess.), No. 14, §§ 1, § 1. 3; 1985, No. 189, § 2; A.S.A. 1947, §§ 72-

CASE NOTES

Administration of Anesthetics.

Registered nurses not specially qualified in the field of anesthesiology could not lawfully administer "epidural anesthetics" without the presence of a physician; the giving of the anesthesia was not the equivalent of merely administering medi-

cine. *Arkansas State Dep't of Health v. Drs. Thibault & Council*, 281 Ark. 297, 664 S.W.2d 445 (1984).

Cited: *Arkansas State Nurses Ass'n v. Arkansas State Medical Bd.*, 283 Ark. 366, 677 S.W.2d 293 (1984).

17-87-104. Penalty.

(a)(1) It shall be a misdemeanor for any person to:

(A) Sell or fraudulently obtain or furnish any nursing diploma, license, renewal, or record, or aid or abet therein;

(B) Practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(C) Practice professional nursing, advanced practice nursing, registered nurse practitioner nursing, practical nursing, or psychiatric technician nursing as defined by this chapter unless licensed by the Arkansas State Board of Nursing to do so;

(D) Use in connection with his or her name any of the following titles, names, or initials, if the user is not properly licensed under this chapter:

(i) Nurse;

(ii) Registered nurse or R.N.;

(iii) Advanced practice nurse or A.P.N., or any of the following:

(a) Advanced registered nurse practitioner, A.R.N.P., or A.N.P.;

(b) Nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.;

(c) Nurse midwife, certified nurse midwife, licensed nurse midwife, C.N.M., or L.N.M.; or

(d) Clinical nurse specialist or C.N.S.;

(iv) Registered nurse practitioner, N.P., or R.N.P.;

(v) Licensed practical nurse, practical nurse, or L.P.N.;

(vi) Licensed psychiatric technician nurse, psychiatric technician nurse, L.P.T.N., or P.T.N.; or

(vii) Any other name, title, or initials that would cause a reasonable person to believe the user is licensed under this chapter;

(E) Practice professional nursing, advanced practice nursing, registered nurse practitioner nursing, practical nursing, or psychiatric technician nursing during the time his or her license shall be suspended;

(F) Conduct a nursing education program for the preparation of professional nurses, advanced practice nurses, nurse practitioners, practical nurses, or psychiatric technician nurses unless the program has been approved by the board;

(G) Prescribe any drug or medicine as authorized by this chapter unless certified by the board as having prescriptive authority, except

that a certified registered nurse anesthetist shall not be required to have prescriptive authority to provide anesthesia care, including the administration of drugs or medicines necessary for the care; or

(H) Otherwise violate any provisions of this chapter.

(2) Such misdemeanor shall be punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500). Each subsequent offense shall be punishable by fine or by imprisonment of not more than thirty (30) days, or by both fine and imprisonment.

(b)(1) After providing notice and a hearing, the board may levy civil penalties in an amount not to exceed one thousand dollars (\$1,000) for each violation against those individuals or entities found to be in violation of this chapter or regulations promulgated thereunder.

(2) Each day of violation shall be a separate offense.

(3) These penalties shall be in addition to other penalties which may be imposed by the board pursuant to this chapter.

(4) Unless the penalty assessed under this subsection is paid within fifteen (15) calendar days following the date for an appeal from the order, the board shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

History. Acts 1971, No. 432, § 18; 1980 (1st Ex. Sess.), No. 14, § 4; A.S.A. 1947, § 72-762; Acts 1995, No. 409, § 4.

17-87-105. Injunction.

(a) The Pulaski County Circuit Court is vested with jurisdiction and power to enjoin the unlawful practice of nursing in any county of the State of Arkansas in a proceeding by the Arkansas State Board of Nursing or by any member thereof or by any citizen in this state.

(b) The issuance of any injunction shall not relieve a person from criminal prosecution for violation of the provisions of this chapter. The remedy of injunction is to be in addition to liability for criminal prosecution.

History. Acts 1971, No. 432, § 19; A.S.A. 1947, § 72-763.

17-87-106. Construction of chapter.

Nothing in this chapter relating to the practice of advanced practice nursing shall be construed to limit or alter the scope of practice of any registered nurse practitioner or any other licensed nurse.

History. Acts 1995, No. 409, § 21.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF NURSING

SECTION.

- 17-87-201. Creation — Members.
- 17-87-202. Organization and proceedings.
- 17-87-203. Powers and duties.
- 17-87-204. Deposit of funds.

SECTION.

- 17-87-205. Prescriptive Authority Advisory Committee.
- 17-87-206. Subpoenas and subpoenas duces tecum.
- 17-87-207. Continuing education.

Cross References. Board members not to be held personally liable for actions as board member, § 17-80-103.

Effective Dates. Acts 1971, No. 432, § 22: Mar. 29, 1971. Emergency clause provided: "Whereas, the business of the Board of Psychiatric Technicians for Arkansas (Acts 1953, No. 124), herein replaced by the Arkansas State Board of Nursing, is conducted on a fiscal year basis beginning May 1, and, to be effective, the provisions of this act shall be enforced prior to that date, an emergency, therefore, is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant per-

centage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 189, § 3: Feb. 26, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the compensation authorized by law for members of the State Board of Nursing is inadequate to compensate the members of such board for the time and duties performed in essential board services; that the Nurse Practices Act does not allow nurses licensed in other states, territories or foreign countries who are engaged in transporting patients into and out of, or through, this state to engage in nursing duties without obtaining an Arkansas nurse's license; that such practice is in need of clarification in order that such persons may engage in such essential duties during transporting of patients in this state for periods not to exceed 48 hours; and that the immediate passage of this act is necessary to clarify and correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordi-

nary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 149, §§ 1, 2: Oct. 1, 2002.

17-87-201. Creation — Members.

(a) There is created the Arkansas State Board of Nursing, to be composed of thirteen (13) members to be appointed by the Governor for terms of four (4) years, subject to confirmation by the Senate.

(b)(1) Six (6) members shall be registered nurses whose highest level of educational preparation shall be as follows:

(A) Two (2) diploma-school graduates;

(B) Two (2) associate degree graduates; and

(C) Two (2) baccalaureate degree or postbaccalaureate degree graduates.

(2) Each registered nurse member of the board shall have the following qualifications:

(A) Be an Arkansas resident;

(B) Have at least five (5) years of successful experience as a registered nurse in nursing practice, administration, or teaching;

(C) Be licensed in Arkansas as a registered nurse; and

(D) Have been employed as a registered nurse for at least three (3) years immediately preceding appointment, two (2) of which shall have been in Arkansas.

(c)(1) One (1) member shall be a licensed advanced practice nurse.

(2) The licensed advanced practice nurse board member shall have the following qualifications:

- (A) Be an Arkansas resident;
 - (B) Have at least five (5) years of experience as an advanced practice nurse;
 - (C) Be licensed in Arkansas as an advanced practice nurse;
 - (D) Have been actively engaged in nursing for at least three (3) years immediately preceding appointment, two (2) of which shall have been in Arkansas; and
 - (E) Have a certificate granting prescriptive authority.
- (d)(1) Four (4) members shall be licensed practical nurses or licensed psychiatric technician nurses.
- (2) Each licensed practical nurse board member or licensed psychiatric technician nurse board member shall have the following qualifications:
- (A) Be an Arkansas resident;
 - (B) Have at least five (5) years of successful experience as a practical nurse or psychiatric technician nurse or as a teacher in an educational program to prepare practitioners of nursing;
 - (C) Be licensed in Arkansas as a licensed practical nurse or licensed psychiatric technician nurse; and
 - (D) Have been employed as a licensed practical nurse or as a licensed psychiatric technician nurse for at least three (3) years immediately preceding appointment, two (2) of which shall have been in Arkansas.
- (e) One (1) member shall be a lay person representing consumers of health care services.
- (f) One (1) member of the board shall not be actively engaged in or retired from the profession of nursing, shall be sixty (60) years of age or older, and shall be the representative of the elderly. This member shall be appointed from the state at large, subject to confirmation by the Senate, and shall be a full voting member but shall not participate in the grading of examinations.
- (g) The consumer representative and the representative of the elderly positions may not be filled by the same person.
- (h) No member shall be appointed to more than two (2) consecutive terms.
- (i) Board members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.
- (j) The terms of all registered nurse members and advanced practice nurse members shall be four (4) years.

History. Acts 1971, No. 432, §§ 3, 4; 1977, No. 113, §§ 1-3; 1979, No. 404, §§ 2, 3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1985, No. 189, § 1; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-747, 72-748; Acts 1995, No. 409, § 5; 1997, No. 250, § 159; 1999, No. 941, § 1; 2001, No. 149, §§ 1, 2; 2007, No. 205, § 1.

A.C.R.C. Notes. Acts 2001, No. 149,

§ 2 was not properly engrossed. Specifically, the General Assembly changed the word “nurses” to “nurse” and added “a” preceding “licensed” in (e)(1).

Publisher's Notes. Acts 2001, No. 149, §§ 1 & 2 each provided that its amendment would take effect October 1, 2002.

Amendments. The 2007 amendment substituted “Four (4)” for “Three (3)” in (d)(1), and inserted “or licensed psychiat-

ric technician nurse” or similar language throughout (d); deleted former (e), and redesignated the following subdivisions accordingly; rewrote present (j); and made related and stylistic changes.

17-87-202. Organization and proceedings.

(a)(1) It shall be the duty of the Arkansas State Board of Nursing to meet regularly at least one (1) time every six (6) months for the purpose of conducting its business.

(2) Special meetings of the board may be called at any time at the pleasure of the President of the Arkansas State Board of Nursing or by the Secretary of the Arkansas State Board of Nursing on the request of any three (3) members of the board.

(3) A majority of the members shall constitute a quorum at any meeting of the board.

(4) The board shall determine by its own rules the time and manner of giving notice of meetings to its members.

(5) The giving of an examination for licensure shall not be considered as a meeting of the board.

(b) The secretary shall keep a record of the minutes of the meetings of the board, together with a record of the action of the board thereon. The records shall at all reasonable times be open for public inspection.

(c) The board shall maintain an office for the administration of its business. The board shall annually elect a president, vice president, secretary, and treasurer from among its members. The president shall be a registered nurse.

(d) The executive director shall be a registered nurse and meet the qualifications required by the board.

History. Acts 1971, No. 432, §§ 4, 8, 9; §§ 72-748, 72-752, 72-753; Acts 2003, No. 1979, No. 404, §§ 3, 5, 6; A.S.A. 1947, 41, § 1.

17-87-203. Powers and duties.

The Arkansas State Board of Nursing shall have the following powers and responsibilities:

(1)(A) Promulgate whatever regulations it deems necessary for the implementation of this chapter.

(B) No regulation promulgated hereafter by the board shall be effective until reviewed by the Legislative Council and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof;

(2) Cause the prosecution of persons violating this chapter;

(3) Keep a record of all its proceedings;

(4) Make an annual report to the Governor;

(5) Employ personnel necessary for carrying out its functions;

(6) Study, review, develop, and recommend role levels of technical classes of nursing service and practice to state and federal health agencies and to public and private administrative bodies;

- (7) Fix the time for holding its regular meetings;
- (8) Prescribe minimum standards and approve curricula for educational programs preparing persons for licensure as registered nurses, advanced practice nurses, registered nurse practitioner nurses, licensed practical nurses, and licensed psychiatric technician nurses;
- (9) Prescribe minimum standards and approve curricula for educational programs preparing persons for certification as medication assistive persons;
- (10) Provide for surveys of such programs at such times as it deems necessary or at the request of the schools;
- (11) Approve programs that meet the requirements of this chapter;
- (12) Deny or withdraw approval from educational programs for failure to meet prescribed standards;
- (13) Examine, certify, and renew the certification of qualified applicants for medication assistive persons;
- (14) Examine, license, and renew the licenses of qualified applicants for professional nursing, practical nursing, and psychiatric technician nursing;
- (15) License and renew the licenses of qualified applicants for registered nurse practitioner nursing and advanced practice nursing;
- (16) Grant certificates of prescriptive authority to qualified advanced practice nurses;
- (17) Convene an advisory committee as provided for in this chapter to assist with oversight of prescriptive authority;
- (18) Convene an advisory committee as provided for in this chapter to assist with oversight of medication assistive persons;
- (19) Establish the maximum number of medication assistive persons who may be supervised by a nurse; and
- (20) Conduct disciplinary proceedings as provided for in this chapter.

History. Acts 1971, No. 432, § 4; 1979, No. 404, § 3; A.S.A. 1947, § 72-748; Acts 1995, No. 409, § 6; 1997, No. 179, § 13; 2005, No. 1423, § 2.

A.C.R.C. Notes. Acts 2005, No. 1423, § 1, provided: "Intent. The General Assembly intends to:

"(1) Authorize the use of medication assistive persons in designated health care facilities in order to facilitate im-

provement in the quality of patient care by creating more time for nurses to conduct patient assessments, evaluations, and treatments;

"(2) Ensure patients receive medication in the most efficient and timely manner; and

"(3) Improve nursing staff retention during this time of severe nursing shortages across the state."

17-87-204. Deposit of funds.

All funds received by the Arkansas State Board of Nursing shall be deposited into the State Treasury to the credit of the board.

History. Acts 1971, No. 432, § 14; 1979, No. 404, § 4; A.S.A. 1947, § 72-758.

17-87-205. Prescriptive Authority Advisory Committee.

(a)(1) The Prescriptive Authority Advisory Committee is created as an advisory committee to the Arkansas State Board of Nursing.

(2) The committee shall assist the board in implementing the provisions of this chapter regarding prescriptive authority.

(b) The board shall appoint five (5) members, to be approved by the Governor, who have the following qualifications:

(1) Three (3) members shall be advanced practice nurses holding certificates of prescriptive authority;

(2) One (1) member shall be a licensed physician who has been involved in a collaborative practice with a registered nurse practitioner for at least five (5) years; and

(3) One (1) member shall be a licensed pharmacist who has been in practice for at least five (5) years.

(c) Members shall serve three-year terms.

(d) The board may remove any committee member, after notice and hearing, for incapacity, incompetence, neglect of duty, or malfeasance in office.

(e) The members shall serve without compensation, but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1995, No. 409, § 7; 1997, No. 250, § 160.

A.C.R.C. Notes. As enacted, subdivision (b)(1) ended: "except that the initial advanced practice nurse appointees shall be exempt from holding a certificate."

As enacted, subsection (b) of this section also provided: "The five (5) initial members appointed to the Prescriptive Authority Advisory Committee shall draw lots to determine the lengths of their initial terms. One (1) initial member shall serve for a term expiring January 1, 1997, two (2) initial members shall serve for terms expiring January 1, 1998, and two (2) initial members shall serve for terms ex-

piring January 1, 1999."

As enacted, subsection (c) of this section began "Successor members" instead of "Members."

As enacted, subsection (c) of this section also provided: "The board shall issue certificates of prescriptive authority to the initial three (3) advanced practice nurse appointees based on the criteria described in this act for prescriptive authority."

As enacted, subsection (d) of this section also provided: "The board shall make the initial appointments and shall select the initial chairperson from the advisory committee membership not later than January 1, 1996."

17-87-206. Subpoenas and subpoenas duces tecum.

(a) The Arkansas State Board of Nursing shall have the power to issue subpoenas and subpoenas duces tecum in connection with both its investigations and hearings.

(b) A subpoena duces tecum may require any book, writing, document, or other paper or thing which is germane to an investigation or hearing conducted by the board to be transmitted to the board.

(c)(1) Service of a subpoena shall be as provided by law for the service of subpoenas in civil cases in the circuit courts of this state, and the fees and mileage of officers serving the subpoenas and of witnesses appearing in answer to the subpoenas shall be the same as provided by law for proceedings in civil cases in the circuit courts of this state.

(2)(A) The board shall issue a subpoena or subpoena duces tecum upon the request of any party to a hearing before the board.

(B) The fees and mileage of the officers serving the subpoena and of the witness shall be paid by the party at whose request a witness is subpoenaed.

(d)(1) In the event a person shall have been served with a subpoena or subpoena duces tecum as provided in this section and fails to comply therewith, the board may apply to the circuit court of the county in which the board is conducting its investigation or hearing for an order causing the arrest of the person and directing that the person be brought before the court.

(2) The court shall have the power to punish the disobedient person for contempt as provided by law in the trial of civil cases in the circuit courts of this state.

History. Acts 1997, No. 894, § 1.

17-87-207. Continuing education.

(a)(1) The Arkansas State Board of Nursing shall adopt rules setting minimum standards for continuing education to ensure that all licensed nurses remain informed about those technical and professional subjects which the board deems appropriate to nursing practice.

(2) The board shall not require more than twenty (20) hours of continuing education per year.

(b) The board shall make every effort to ensure that the continuing education programs are offered either within the nurse's workplace or at another place convenient to the nurse, whether through live presentation or distance learning.

(c)(1) The board shall adopt rules to prescribe the methods by which the minimum standards for continuing education may be satisfied.

(2) The failure of any licensed nurse to satisfy the minimum standards for continuing education shall be grounds for disciplinary action or nonrenewal of the nurse's license, or both.

History. Acts 2001, No. 86, § 1.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-87-301. Registered nurses.
- 17-87-302. Advanced practice nurses.
- 17-87-303. Registered nurse practitioners.
- 17-87-304. Licensed practical nurses.
- 17-87-305. Licensed psychiatric technician nurses.
- 17-87-306. Fees.

SECTION.

- 17-87-307. Temporary permits.
- 17-87-308. Renewal of licenses.
- 17-87-309. Disciplinary actions.
- 17-87-310. Prescriptive authority.
- 17-87-311. Direct reimbursement agreements.
- 17-87-312. Criminal background checks.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1971, No. 432, § 22: Mar. 29, 1971. Emergency clause provided: "Whereas, the business of the Board of Psychiatric Technicians for Arkansas (Acts 1953, No. 124), herein replaced by the Arkansas State Board of Nursing, is conducted on a fiscal year basis beginning May 1, and, to be effective, the provisions of this act shall be enforced prior to that date, an emergency, therefore, is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 88, § 3: Jan. 31, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need in this state to increase the number of nurses eligible to practice nursing and that this act is necessary to help alleviate this shortage of nurses. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 613, § 5: Mar. 28, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the role of registered nurse practitioner is not clearly defined by the present laws of this state governing the licensing and registration of nurses; that legal recognition of the purpose and role of a registered nurse practitioner is necessary to encourage persons who are qualified to be registered nurses to take the educational training to become registered nurse practitioners and to amend the laws of this state to authorize the appropriate issuance of registered nurse practitioner licenses to persons possessing the qualifications provided therefor; and that the immediate passage of this act is necessary to accomplish said purposes and to improve the health delivery services to people in this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 14, § 8: Jan. 25, 1980. Emergency clause provided: "It is hereby found and determined by the Arkansas General Assembly that the existing law authorizing the practice of nurse anesthesia is inadequate, that this act is necessary to provide an adequate number of qualified personnel who can administer anesthesia, and that without this act the hospitals of this state will face crucial shortages in the number of certified personnel necessary to administer anesthetics. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 54, § 4: Feb. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Board of Nursing should have the flexibility to waive the requirement that an applicant for licensure as a licensed practical nurse or licensed psychiatric technician nurse hold a diploma or certificate evidencing completion of a prescribed curriculum in a state-approved program; that present law does not so provide; and that unless this act is immediately effective persons otherwise qualified to be licensed as licensed practical nurses and licensed psychiatric technician nurses will not be able to be licensed, and needed medical services will be denied the citizens of this state. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981 (1st Ex. Sess.), No. 19, § 12: Nov. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas State Board of Nursing receives its financial support from moneys derived from fees collected by said board in the licensing and regulation of nurses in this state; that the present schedule of fees is not producing sufficient income to support the necessary functions of the State Board of Nursing; that the duties performed by, and the services rendered by, the State Board of Nursing are essential to the public health, welfare, and safety of the people of this state who are dependent

upon competent and adequate nursing services; and that the immediate passage of this act is necessary to provide a schedule of fees to be charged by the State Board of Nursing which will produce adequate income to enable the board to adequately and efficiently perform the duties imposed upon said board by law. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 147, § 3: Mar. 10, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current law concerning licensure renewal by the State Board of Nursing is not consistent with current practices and that to implement the current law would impose a hardship on the State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby

found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-87-301. Registered nurses.

(a) **QUALIFICATIONS.** Before taking the examination or before the issuance of a license by endorsement, an applicant for a license to practice professional nursing shall submit to the Arkansas State Board of Nursing written evidence, verified by oath, that the applicant:

- (1) Is of good moral character;
- (2) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and
- (3) Has completed the required approved professional nursing education program.

(b) **ISSUANCE OF LICENSE.** A license to practice as a registered nurse may be issued:

(1) **BY EXAMINATION.** The applicant shall be required to pass an examination in such subjects as the board may determine. Upon successfully passing the examination, the board shall issue to the applicant a license to practice professional nursing as a registered nurse;

(2) **BY ENDORSEMENT.** The board may issue a license to practice professional nursing as a registered nurse by endorsement to an

applicant who has been duly licensed as a registered nurse under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the qualifications required of registered nurses in this state at the time of graduation and if the board so recommends.

(c) **NURSES REGISTERED PRIOR TO MARCH 29, 1971.** Any person holding a license or certificate of registration to practice nursing as a registered nurse issued by the board which was valid on March 29, 1971, shall be deemed to be licensed as a registered nurse under the provisions of this chapter.

(d) **TITLE AND ABBREVIATION.** Any person who holds a license to practice professional nursing in this state shall have the right to use the title "registered nurse" and the abbreviation "R.N.".

History. Acts 1971, No. 432, § 10; Acts 1991, No. 162, § 1; 1995, No. 409, 1979, No. 613, § 3; 1981 (1st Ex. Sess.), § 8.
No. 19, §§ 1-3; A.S.A. 1947, § 72-754;

CASE NOTES

Cited: Arkansas State Nurses Ass'n v. Arkansas State Medical Bd., 283 Ark. 366, 677 S.W.2d 293 (1984).

17-87-302. Advanced practice nurses.

(a) **QUALIFICATIONS.** In order to be licensed as an advanced practice nurse, an applicant must show evidence of education approved by the Arkansas State Board of Nursing, and national certification approved by the board under one (1) of the following:

(1) **ADVANCED REGISTERED NURSE PRACTITIONER.** In order to qualify as an advanced registered nurse practitioner, an applicant must be currently certified as a nurse practitioner by a nationally recognized certifying body;

(2) **CERTIFIED REGISTERED NURSE ANESTHETIST.** To qualify as a certified registered nurse anesthetist, an applicant must:

(A) Have earned a diploma or certificate evidencing satisfactory completion, beyond generic nursing preparation, of a formal educational program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs or another nationally recognized accrediting body and that has as its objective the preparation of nurses to perform as nurse anesthetists; and

(B) Hold current certification from the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, or other nationally recognized certifying body;

(3) **CERTIFIED NURSE MIDWIFE.** To qualify as a certified nurse midwife, an applicant must:

(A) Hold current certification as a nurse midwife from the American College of Nurse Midwives or other nationally recognized certifying body; and

(B) Have an agreement with a consulting physician if providing intrapartum care;

(4) **CLINICAL NURSE SPECIALIST.** In order to qualify as a clinical nurse specialist, an applicant must hold a master's degree evidencing successful completion of a graduate program in nursing, which shall include supervised clinical practice and classroom instruction in a nursing specialty, and must be nationally certified in a specialty role as a clinical nurse specialist.

(b) **ISSUANCE OF LICENSE.** A license to practice as an advanced practice nurse may be issued:

(1) **BY APPLICATION.** Any person holding a license to practice as a registered nurse and meeting the educational qualifications and certification requirements to be licensed as an advanced practice nurse, upon application and payment of necessary fees to the board, may be licensed as an advanced practice nurse; and

(2) **BY ENDORSEMENT.** The board may issue a license to practice advanced practice nursing by endorsement to any applicant who has been licensed as an advanced practice nurse or to a person entitled to perform similar services under a different title under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the requirements for advanced practice nurses in this state.

(c) **TITLE AND ABBREVIATION.** Any person who holds a license to practice as an advanced practice nurse shall have the right to use the title of "advanced practice nurse" and the abbreviation "A.P.N.".

History. Acts 1971, No. 432, § 2; 1979, No. 404, §§ 1, 7; 1979, No. 613, § 2; 1980 (1st Ex. Sess.), No. 14, §§ 5, 6; 1981 (1st Ex. Sess.), No. 19, § 8; A.S.A. 1947, §§ 72-746, 72-756.1, 72-756.2; Acts 1995, No. 409, § 9; 1999, No. 1208, § 2.

Cross References. Prescriptive authority of advanced practice nurses, § 17-92-110.

CASE NOTES

Cited: Arkansas State Nurses Ass'n v. Arkansas State Medical Bd., 283 Ark. 366, 677 S.W.2d 293 (1984).

17-87-303. Registered nurse practitioners.

(a)(1) Any person holding a license to practice as a registered nurse and possessing the educational qualifications required under subsection (b) of this section to be licensed as a registered nurse practitioner, upon application and payment of necessary fees to the Arkansas State Board of Nursing, may be licensed as a registered nurse practitioner and have the right to use the title of "registered nurse practitioner" and the abbreviation "R.N.P.".

(2) No other person shall assume such a title or use such an abbreviation or any other words, letters, signs, or devices to indicate that the person using them is a registered nurse practitioner.

(b) In order to be licensed as a registered nurse practitioner, a registered nurse must hold a certificate or academic degree evidencing successful completion of the educational program of an accredited school of nursing or other nationally recognized accredited program recognized by the board as meeting the requirements of a nurse practitioner program.

(c) However, any person qualified to receive a license as a registered nurse practitioner may obtain the license upon the payment of a fee not to exceed twenty-five dollars (\$25.00) for the original license. The license fees are to be in addition to the person's registered nurse license fees.

History. Acts 1971, No. 432, §§ 2, 10; §§ 2, 3; 1981 (1st Ex. Sess.), No. 19, 1979, No. 404, §§ 1, 7; 1979, No. 613, §§ 1-3; A.S.A. 1947, §§ 72-746, 72-754.

CASE NOTES

Cited: Arkansas State Nurses Ass'n v. Arkansas State Medical Bd., 283 Ark. 366, 677 S.W.2d 293 (1984).

17-87-304. Licensed practical nurses.

(a) **QUALIFICATIONS.** An applicant for a license to practice practical nursing shall submit to the Arkansas State Board of Nursing evidence, verified by oath, that the applicant:

- (1) Is of good moral character;
- (2) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and
- (3) Has completed a prescribed curriculum in a state-approved program for the preparation of practical nurses and holds a diploma or certificate therefrom. However, the board may waive this requirement if the board determines the applicant to be otherwise qualified.

(b) **ISSUANCE OF LICENSE.** A license to practice as a practical nurse may be issued:

(1) **By EXAMINATION.** The applicant shall be required to pass an examination in such subjects as the board may determine. Upon successful completion of the examination, the board shall issue to the applicant a license to practice as a licensed practical nurse;

(2) **By ENDORSEMENT.** The board may issue a license to practice practical nursing by endorsement to any applicant who has duly been licensed or registered as a licensed practical nurse or to a person entitled to perform similar services under a different title under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the requirements for licensed practical nurses in this state at the time of graduation and if the board so recommends.

(c) **PERSON LICENSED PRIOR TO MARCH 29, 1971.** Any person holding a license to practice as a practical nurse issued by the board and which

was valid on March 29, 1971, shall be deemed to be licensed as a practical nurse under the provisions of this chapter.

(d) **TITLE AND ABBREVIATION.** Any person who holds a license to practice practical nursing in this state shall have the right to use the title "licensed practical nurse" and the abbreviation "L.P.N."

History. Acts 1971, No. 432, § 11; 19, §§ 4, 5; A.S.A. 1947, § 72-755; Acts 1981, No. 54, § 1; 1981 (1st Ex. Sess.), No. 1991, No. 162, § 2; 1995, No. 409, § 10.

17-87-305. Licensed psychiatric technician nurses.

(a) **QUALIFICATIONS.** An applicant for a license to practice psychiatric technician nursing shall submit to the Arkansas State Board of Nursing evidence, verified by oath, that the applicant:

- (1) Is of good moral character;
- (2) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and
- (3) Has completed a prescribed curriculum in a state-approved program for the preparation of psychiatric technician nurses and holds a diploma or certificate therefrom. However, the board may waive this requirement if the board determines the applicant to be otherwise qualified.

(b) **ISSUANCE OF LICENSE.** A license to practice as a psychiatric technician nurse may be issued:

(1) **BY EXAMINATION.** The applicant shall be required to pass a written examination in such subjects as the board may determine. Each written examination may be supplemented by an oral examination. Upon successfully passing the examination, the board shall issue to the applicant a license to practice as a psychiatric technician nurse. All such examinations shall be conducted by an examiner, who shall be a registered nurse, and by an assistant examiner, who shall be a licensed psychiatric technician nurse;

(2) **BY ENDORSEMENT.** The board may issue a license to practice psychiatric technician nursing by endorsement to an applicant who has duly been licensed or registered as a licensed psychiatric technician nurse or a person entitled to perform similar services under a different title under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the requirements for licensed psychiatric technician nurses in this state at the time of graduation and if the board so recommends.

(c) **PERSON LICENSED PRIOR TO MARCH 29, 1971.** Any person holding a license to practice as a psychiatric technician issued by the board in accordance with Acts 1953, No. 124 [repealed], and which was valid on March 29, 1971, shall be deemed to be licensed as a psychiatric technician nurse under the provisions of this chapter.

(d) **TITLE AND ABBREVIATION.** Any person who holds a license to practice psychiatric technician nursing in this state shall have the right to use the title "licensed psychiatric technician nurse" and the abbreviation "L.P.T.N."

History. Acts 1971, No. 432, § 12; 19, §§ 6, 7; A.S.A. 1947, § 72-756; Acts 1981, No. 54, § 2; 1981 (1st Ex. Sess.), No. 1995, No. 409, § 11.

17-87-306. Fees.

The Arkansas State Board of Nursing shall establish and collect fees and penalties for services relating to certification, examination, licensing, endorsement, certification for prescriptive authority, temporary permits, license renewal, certification renewal, and other reasonable services as determined by the board.

History. Acts 1995, No. 409, § 12; 2005, No. 1423, § 3.

A.C.R.C. Notes. Acts 2005, No. 1423, § 1, provided: "Intent. The General Assembly intends to:

"(1) Authorize the use of medication assistive persons in designated health care facilities in order to facilitate improvement in the quality of patient care by creating more time for nurses to conduct patient assessments, evaluations, and treatments;

"(2) Ensure patients receive medication in the most efficient and timely manner; and

"(3) Improve nursing staff retention during this time of severe nursing shortages across the state."

Publisher's Notes. Former § 17-86-306, concerning nonresident nurses in cities on state line, was repealed by Acts 1987, No. 148, §§ 1, 2. The former section was derived from Acts 1965, No. 62, § 1; 1965, No. 113, § 1; A.S.A. 1947, §§ 72-726, 72-727.

17-87-307. Temporary permits.

(a)(1) Upon application and payment of the required fee, the Arkansas State Board of Nursing may issue a temporary permit to practice professional, practical, or psychiatric technician nursing to a qualified applicant who has:

(A) Completed a program in professional, practical, or psychiatric technician nursing approved by the appropriate state or national authorizing agency of this state or country and by the appropriate authorizing agency of other states or territories or foreign countries; and

(B) Applied for or is awaiting results of the first examination he or she is eligible to take after the permit is issued.

(2) The permit shall become invalid upon notification to the applicant of the results of the first examination he or she is eligible to take after the permit is issued.

(b)(1) Upon application and payment of the required fee, the board shall issue a temporary permit to a qualified applicant holding a current professional, practical, or psychiatric technician license from another jurisdiction from any other state or territory awaiting endorsement.

(2) This permit must have an issuance date and an expiration date. The permit shall be valid for no more than six (6) months.

(c)(1) Upon application and payment of the required fee, an applicant shall be issued a temporary permit to practice advanced practice nursing who has:

(A) Satisfactorily completed an educational program for advanced practice nursing approved by the board; and

(B) Been accepted by the appropriate certification body to sit for the first national certification exam he or she is eligible to take.

(2) The permit shall expire upon notification to the applicant of the results of the examination.

(3) The permit is not renewable and does not apply to prescriptive authority.

(d)(1) Upon application and payment of the required fee, the board shall issue a temporary permit to a qualified applicant holding a current advanced practice nurse license or the equivalent from another jurisdiction from any other state or territory awaiting endorsement.

(2)(A) This permit must have an issuance date and a date when it shall become invalid.

(B) The permit shall automatically become invalid upon notification of the applicant's failure to pass the appropriate national certification exam.

(C) In no event shall the permit be valid in excess of six (6) months.

History. Acts 1971, No. 432, § 13; 1977, No. 88, § 1; 1979, No. 90, § 1; 1980 (1st Ex. Sess.), No. 14, § 2; 1981 (1st Ex. Sess.), No. 19, § 9; A.S.A. 1947, § 72-757; Acts 1995, No. 409, § 13; 2001, No. 303, § 1.

Publisher's Notes. Acts 1977, No. 88, § 2, provided that the provisions of the act would expire on December 31, 1979.

17-87-308. Renewal of licenses.

(a)(1) The Arkansas State Board of Nursing shall prescribe the procedure for the cyclical biennial renewal of licenses to every person licensed by the board.

(2) In each case, the board shall mail a notification for renewal to the licensee at least thirty (30) days prior to the expiration date of the license.

(b) Upon receipt of the application and the fee, the board shall verify the accuracy of the application and renew the license for a period to expire on the last day of the current biennial cycle.

(c) The renewal shall render the holder a legal practitioner of nursing for the period stated in subsection (b) of this section.

(d) Any licensee who allows his or her license to lapse by failing to renew the license as provided in this section may be reinstated by the board on payment of the renewal fee plus a penalty.

(e) Any person practicing nursing during the time his or her license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter.

(f)(1)(A) An individual may place his or her license on inactive status with written notification to the board.

(B) The holder of an inactive license shall not practice nursing in this state.

(2)(A) The provisions relating to the denial, suspension, and revocation of a license shall be applicable to an inactive or lapsed license.

(B) When proceedings to suspend or revoke an inactive license or otherwise discipline the holder of an inactive license have been initiated, the license shall not be reinstated until the proceedings have been completed.

(3) An inactive license may be placed in an active status upon compliance with the rules established by the board.

(g) As a condition of licensure renewal, an advanced practice nurse shall submit proof of current national certification and successful completion of continuing education as required by the board.

History. Acts 1971, No. 432, § 13; 1981 No. 409, § 14; 1997, No. 179, § 14; 2005, (1st Ex. Sess.), No. 19, § 9; A.S.A. 1947, No. 61, § 1.
§ 72-757; Acts 1987, No. 147, § 1; 1995,

17-87-309. Disciplinary actions.

(a) The Arkansas State Board of Nursing shall have sole authority to deny, suspend, revoke, or limit any license or privilege to practice nursing or certificate of prescriptive authority issued by the board or applied for in accordance with the provisions of this chapter or to otherwise discipline a licensee upon proof that the person:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing or is engaged in the practice of nursing without a valid license;

(2) Is guilty of a crime or gross immorality;

(3) Is unfit or incompetent by reason of negligence, habits, or other causes;

(4) Is habitually intemperate or is addicted to the use of habit-forming drugs;

(5) Is mentally incompetent;

(6) Is guilty of unprofessional conduct;

(7) Has had a license, privilege to practice, certificate, or registration revoked or suspended or has been placed on probation or under disciplinary order in any jurisdiction;

(8) Has voluntarily surrendered a license, privilege to practice, certification, or registration and has not been reinstated in any jurisdiction; or

(9) Has willfully or repeatedly violated any of the provisions of this chapter.

(b) The board shall refuse to issue or shall revoke the license of any person who is found guilty of or pleads guilty or nolo contendere to any offense listed in § 17-87-312(f), unless the person requests and the board grants a waiver pursuant to § 17-87-312(h).

(c) Proceedings under this section shall be as provided in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1971, No. 432, § 16; § 15; 1999, No. 1208, § 3; 2001, No. 212, A.S.A. 1947, § 72-760; Acts 1995, No. 409, § 1; 2007, No. 207, § 1.

Amendments. The 2007 amendment inserted “or privilege” in (a), inserted “privilege to practice” in (a)(7) and (a)(8), and made related changes.

CASE NOTES

ANALYSIS

Appeal.

Sufficiency of Evidence.

Appeal.

Before a decision of the board may be reversed on appeal, it must appear that fair-minded persons with the facts before them could not have reached the conclusion arrived at by the board. *Arkansas State Bd. of Nursing v. Long*, 8 Ark. App. 288, 651 S.W.2d 109 (1983).

Sufficiency of Evidence.

Evidence insufficient to support the board's decision that nursing home administrator's conduct constituted negligent and unprofessional nursing judgment. *Arkansas State Bd. of Nursing v. Long*, 8 Ark. App. 288, 651 S.W.2d 109 (1983).

There was substantial evidence to support the Board's finding that nurse diverted drugs from her employers, made

false documentation about those drugs, and acted in an unprofessional manner, in violation of subdivisions (a)(4) and (6) of this section. *Bohannon v. Arkansas State Bd. of Nursing*, 320 Ark. 169, 895 S.W.2d 923 (1995).

Trial court properly concluded that insufficient evidence supported the decision of Arkansas State Board of Nursing that a nurse engaged in “unprofessional conduct” in violation of subdivision (a)(6) of this section by writing prescriptions without authority due to her failure to submit a collaborative practice agreement (CPA) with the Board; the Board failed to prove both an act or omission on the nurses's part that fell below the standard of care of the nursing profession and that such act or omission was the result of a conscious disregard for the health and welfare of the public and of the patient under the nurse's care. *Ark. State Bd. of Nursing v. Morrison*, 88 Ark. App. 202, 197 S.W.3d 16 (2004).

17-87-310. Prescriptive authority.

(a) The Arkansas State Board of Nursing may grant a certificate of prescriptive authority to an advanced practice nurse who:

(1) Submits proof of successful completion of a board-approved advanced pharmacology course that shall include preceptorial experience in the prescription of drugs, medicines, and therapeutic devices; and

(2) Has a collaborative practice agreement with a physician who is licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and who has a practice comparable in scope, specialty, or expertise to that of the advanced practice nurse on file with the Arkansas State Board of Nursing.

(b)(1) An advanced practice nurse with a certificate of prescriptive authority may receive and prescribe drugs, medicines, or therapeutic devices appropriate to the advanced practice nurse's area of practice in accordance with rules established by the Arkansas State Board of Nursing.

(2) An advanced practice nurse's prescriptive authority shall only extend to drugs listed in Schedules III — V.

(c) A collaborative practice agreement shall include, but not be limited to, provisions addressing:

(1) The availability of the collaborating physician for consultation or referral, or both;

(2) Methods of management of the collaborative practice, which shall include protocols for prescriptive authority;

(3) Coverage of the health care needs of a patient in the emergency absence of the advanced practice nurse or physician; and

(4) Quality assurance.

(d) If a collaborative practice results in complaints of violations of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., the Arkansas State Medical Board may review the role of the physician in the collaborative practice to determine if the physician is unable to manage his or her responsibilities under the agreement without an adverse effect on the quality of care of the patient.

(e) If a collaborative practice results in complaints of violations of this chapter, the Arkansas State Board of Nursing may review the role of the advanced practice nurse in the collaborative practice to determine if the nurse is unable to manage his or her responsibilities under the agreement without an adverse effect on the quality of care of the patient.

History. Acts 1995, No. 409, § 16.

thority of advanced practice nurses, § 17-

Cross References. Prescriptive au- 92-110.

17-87-311. Direct reimbursement agreements.

(a) An advanced practice nurse or a registered nurse practitioner may enter into a direct reimbursement agreement with the agency administering the state medicaid program.

(b) The agency administering the state medicaid program shall not discriminate against practitioners providing covered services within the scope of their practice based on the type of practitioner.

History. Acts 1995, No. 409, § 17.

17-87-312. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas State Board of Nursing shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward

to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (e) of this section.

(e) Except as provided in subdivision (l)(1) of this section, no person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or has been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;
- (9) Aggravated robbery as prohibited in § 5-12-103;
- (10) Battery in the first degree as prohibited in § 5-13-201;
- (11) Aggravated assault as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (14) Rape as prohibited in § 5-14-103;
- (15) Sexual indecency with a child as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
- (17) Incest as prohibited in § 5-26-202;
- (18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;
- (21) Permitting abuse of a minor as prohibited in § 5-27-221(a);
- (22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse as prohibited in § 5-28-103;
- (24) Theft of property as prohibited in § 5-36-103;
- (25) Theft by receiving as prohibited in § 5-36-106;
- (26) Arson as prohibited in § 5-38-301;

- (27) Burglary as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510 as prohibited in § 5-64-401;
- (29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;
- (30) Stalking as prohibited in § 5-71-229;
- (31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;
- (32) Computer child pornography as prohibited in § 5-27-603; and
- (33) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(f)(1)(A) The board may issue a nonrenewable temporary permit for licensure to a first-time applicant pending the results of the criminal background check.

(B) The permit shall be valid for no more than six (6) months.

(2) Except as provided in subdivision (1)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding the letter of provisional licensure has pleaded guilty or nolo contendere to, or has been found guilty of, any offense listed in subsection (e) of this section, the board shall immediately revoke the provisional license.

(g)(1) The provisions of subsection (e) and subdivision (f)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of the public.

(h)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by:

(A) The affected applicant for licensure or his or her authorized representative; or

(B) The person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(i) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(k) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(l)(1) For purposes of this section, an expunged record of a conviction or a plea of guilty or nolo contendere to an offense listed in subsection (e) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (l)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Kidnapping as prohibited in § 5-11-102;

(D) Rape as prohibited in § 5-14-103;

(E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;

(F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-206;

(G) Incest as prohibited in § 5-26-202;

(H) Arson as prohibited in § 5-38-301;

(I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and

(J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1999, No. 1208, § 4; 2001, No. 303, §§ 2-4; 2003, No. 103, §§ 1, 2; No. 1087, § 15; No. 1386, § 1; No. 1449, § 1; 2005, No. 1923, § 2.

A.C.R.C. Notes. Pursuant to § 1-2-

207(b), the amendment of (e)(24) by Acts 2003, No. 1386, § 1, supersedes the amendment of (e)(24) by Acts 2003, No. 103, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Criminal Law, Computer Crimes, 26 U. Ark. Little Rock L. Rev. 361.

Survey of Legislation, 2003 Arkansas General Assembly, Professions, Occupa-

tions, Businesses, Criminal Background Checks, 26 U. Ark. Little Rock L. Rev. 451.

Survey of Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Businesses, Background Checks, 26 U. Ark. Little Rock L. Rev. 456.

SUBCHAPTER 4 — EDUCATIONAL PROGRAMS**SECTION.**

17-87-401. Nursing education programs.
17-87-402. Institutions of higher education — Challenge and validation examinations.

SECTION.

17-87-403. Nursing recruitment and admission.

Cross References. Continuing education requirements, § 17-80-104.

Graduate nursing practice and nurse educator student loans and scholarships, § 6-81-1201 et seq.

Effective Dates. Acts 1971, No. 432, § 22: Mar. 29, 1971. Emergency clause provided: "Whereas, the business of the Board of Psychiatric Technicians for Arkansas (Acts 1953, No. 124), herein re-

placed by the Arkansas State Board of Nursing, is conducted on a fiscal year basis beginning May 1, and, to be effective, the provisions of this act shall be enforced prior to that date, an emergency, therefore, is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-87-401. Nursing education programs.

(a) An institution desiring to conduct a nursing education program to prepare professional, advanced practice, nurse practitioner, practical, and psychiatric technician nurses shall apply to the Arkansas State Board of Nursing and submit evidence that:

(1) It is prepared to carry out a program in professional nursing education, advanced practice nursing education, nurse practitioner nursing education, practical nursing education, or psychiatric technician nursing training, as the case may be; and

(2) It is prepared to meet such standards as shall be established by this chapter and by the board.

(b)(1) A survey of the institution and its entire nursing education program shall be made by an authorized representative of the board, who shall submit a written report of the survey to the board.

(2) If, in the opinion of the board, the requirements for an approved nursing education program are met, the program shall be approved as a nursing education program for professional, advanced practice, nurse practitioner, practical, and psychiatric technician nurses.

(c)(1) From time to time, as deemed necessary, it shall be the duty of the board, through its authorized representative, to survey its nursing education programs in the state.

(2) Written reports of such surveys shall be submitted to the board.

(3) If the board shall determine that any approved nursing education program under its supervision is not maintaining the standards required by the statutes and by the board, notice thereof in writing specifying the defect or defects shall be immediately given to the institution conducting the program.

(4) A program that fails within a reasonable time to correct these conditions to the satisfaction of the board shall be withdrawn after a hearing.

History. Acts 1971, No. 432, § 15; A.S.A. 1947, § 72-759; Acts 1995, No. 409, § 18.

17-87-402. Institutions of higher education — Challenge and validation examinations.

(a) As used in this section:

(1) “Challenge examination” means a test designed to determine the level of knowledge of the person being tested in the subject area of the test. Challenge examinations may cover any area of academic pursuit; and

(2) “Validation examination” means an evaluation of prior knowledge, experience, or skills. Validation examinations are administered to determine the proper placement of the examinee within the nurse training program.

(b) The Department of Higher Education shall:

(1) Encourage and supervise the development of methods of validation of nursing knowledge and skills through written and clinical testing mechanisms;

(2) Review and approve validation and challenge examinations for fairness and relevant content;

(3) Set uniform passing scores to be used by institutions of higher education in this state for passing standardized validation and challenge examinations when the passing scores are not determined at the national level; and

(4) Require schools using individual school-made tests to select one (1) standard passing score for each test which any level of student must achieve to receive credit.

(c) All institutions of higher education in this state shall use standardized validation and challenge examinations or devise their own. All challenge examinations and all validation examinations shall be submitted to the department for its approval. Upon the successful passing of a validation examination or challenge examination, the examinee shall be given credit for the course which is the subject of the test.

(d) Each Arkansas institution of higher education shall accept the credit given by other Arkansas institutions of higher education for the successful passing of a challenge examination or a validation examination on any course required in the nursing curriculum.

(e)(1) Licensed practical nurses and licensed psychiatric technician nurses may transfer or challenge by test, or validate, up to thirty (30) semester credit hours from the total nursing program curriculum upon entering diploma, associate degree, or baccalaureate degree programs in nursing in Arkansas. This does not include other hours they may have earned which may also be transferred.

(2) Registered nurses may transfer or challenge by test, or validate, up to sixty (60) semester credit hours from the total nursing program curriculum upon entering a baccalaureate degree program in nursing in Arkansas. This does not include other hours they may have earned which may also be transferred.

History. Acts 1979, No. 88, §§ 1-5;
A.S.A. 1947, §§ 72-759.1 — 72-759.5.

17-87-403. Nursing recruitment and admission.

Upon request, the Arkansas State Board of Nursing shall provide assistance to publicly supported institutions of higher education in implementing programs offered under § 6-60-212.

History. Acts 2005, No. 1256, § 2.

SUBCHAPTER 5 — NURSE MIDWIVES

SECTION.

17-87-501 — 17-87-507. [Repealed.]

17-87-501 — 17-87-507. [Repealed.]

Publisher's Notes. Former subchapter 5, concerning nurse midwives, was repealed by Acts 1995, No. 409, § 19. The former subchapter was derived from the following sources:

17-86-501. Acts 1983, No. 824, § 1;
A.S.A. 1947, § 72-2201.

17-86-502. Acts 1983, No. 824, § 2;
A.S.A. 1947, § 72-2202.

17-86-503. Acts 1983, No. 824, § 5;
A.S.A. 1947, § 72-2205; Acts 1991, No. 343, § 5.

17-86-505. Acts 1983, No. 824, § 3;
A.S.A. 1947, § 72-2203.

17-86-506. Acts 1983, No. 824, § 4;
A.S.A. 1947, § 72-2204.

17-86-507. Acts 1983, No. 824, § 2;
A.S.A. 1947, § 72-2202.

Section 17-86-504, concerning the Nurse Midwife Committee, was previously repealed by Acts 1991, No. 343, § 5. The section was derived from Acts 1983, No. 824, § 6; A.S.A. 1947, § 72-2206.

SUBCHAPTER 6 — NURSE LICENSURE COMPACT

SECTION.

17-87-601. Text of Compact.

17-87-602. Practice privileges — Power of board to limit or revoke.

SECTION.

17-87-603. Definition.

17-87-604. Effective date.

17-87-601. Text of Compact.

The Interstate Nurse Licensure Compact is enacted into law and entered into by this state with all states legally joining therein and in the form substantially as follows:

NURSE LICENSURE COMPACT

ARTICLE I

Findings and Declaration of Purpose

(a) The party states find that:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's healthcare delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this Compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety;

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction;

(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

Definitions

As used in this Compact:

(1) "Adverse action" means a home or remote state action;

(2) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board;

(3) "Coordinated Licensure Information System" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a non-profit organization composed of and controlled by state nurse licensing boards;

(4) "Current significant investigative information" means:

(A) Investigative information that a licensing board after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(B) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond;

(5) "Home state" means the party state which is the nurse's primary state of residence;

(6) "Home state action" means any administrative, civil, equitable or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice;

(7) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses;

(8) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice;

(9) "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws;

(10) "Party state" means any state that has adopted this Compact;

(11) "Remote state" means a party state, other than the home state:

(A) Where the patient is located at the time nursing care is provided; or

(B) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located;

(12) "Remote state action" means:

(A) Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state; and

(B) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof;

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

(14) "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifica-

tions for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III

General Provisions and Jurisdiction

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their states and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) This Compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

Applications for Licensure in a Party State

(a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system,

whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold licensure in only one (1) party state at a time, issued by the home state.

(c) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(d) When a nurse changes primary state of residence by:

(1) Moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(3) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V

Adverse Actions

In addition to the General Provisions described in Article III, the following provisions apply:

(1) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports;

(2) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action(s), and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions;

(3) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state;

(4) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action;

(5) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action; and

(6) Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI

Additional Authorities Invested in Party State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(1) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(2) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located;

(3) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state; and

(4) Promulgate uniform rules and regulations as provided for in Article VIII(c).

ARTICLE VII

Coordinated Licensure Information System

(a) All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party

states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party states contributing that information, shall also be expunged from the coordinated licensure information system.

(g) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact.

ARTICLE VIII

Compact Administration and Interchange of Information

(a) The head of the nurse licensing board, or his/her designee, of each party state shall be the administrator of this Compact for his/her state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this Compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this Compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI(d).

ARTICLE IX

Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this Compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this Compact. Good faith in this article shall not include willful misconduct or gross negligence.

ARTICLE X

Entry into Force, Withdrawal and Amendment

(a) This Compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the Compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this Compact.

(d) This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI

Construction and Severability

(a) This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this Compact:

(1) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in the remote state(s) involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(2) The decision of a majority of the arbitrators shall be final and binding.

History. Acts 1999, No. 220, § 1.

17-87-602. Practice privileges — Power of board to limit or revoke.

The Arkansas State Board of Nursing may limit or revoke practice privileges in this state of a person licensed to practice nursing by a jurisdiction that has joined the Compact or take action on previous practice privilege action from another party state.

History. Acts 1999, No. 220, § 2.

17-87-603. Definition.

As used in this subchapter, the term “head of the nurse licensing board” shall mean the Executive Director of the Arkansas State Board of Nursing.

History. Acts 1999, No. 220, § 3.

17-87-604. Effective date.

(a) The effective date of this Compact shall be July 1, 2000.

(b) Upon the effective date of this compact, the licensing board shall participate in an evaluation of the effectiveness and operability of the compact. Upon completion of the evaluation, a report shall be submitted to the Legislative Council for its review.

History. Acts 1999, No. 220, § 4.

SUBCHAPTER 7 — MEDICATION ASSISTIVE PERSONS

SECTION.

- 17-87-701. Definitions.
- 17-87-702. Certificate required.
- 17-87-703. Designated facilities.
- 17-87-704. Qualifications.
- 17-87-705. Scope of work.
- 17-87-706. Renewal of certifications.

SECTION.

- 17-87-707. Disciplinary actions.
- 17-87-708. Penalty.
- 17-87-709. Injunction.
- 17-87-710. Medication Assistive Person
Advisory Committee.
- 17-87-711. Applicability of subchapter.

A.C.R.C. Notes. Acts 2005, No. 1423, § 1, provided: "Intent. The General Assembly intends to:

"(1) Authorize the use of medication assistive persons in designated health care facilities in order to facilitate improvement in the quality of patient care by creating more time for nurses to conduct patient assessments, evaluations, and treatments;

"(2) Ensure patients receive medication in the most efficient and timely manner; and

"(3) Improve nursing staff retention during this time of severe nursing shortages across the state."

Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009. Effective date clause provided: "This act shall be effective September 1, 2009."

17-87-701. Definitions.

As used in this subchapter:

(1) "Board" means the Arkansas State Board of Nursing;

(2) "Designated facility" means a type of facility determined by the board as an environment in which medication assistive persons may serve in accordance with the requirements of this subchapter and regulations promulgated by the board;

(3) "Medication assistive person" means a person who is certified by the board to administer certain nonprescription and legend drugs in designated facilities; and

(4) "Supervision" means the active oversight of patient care services while on the premises of a designated facility in a manner defined by the board.

History. Acts 2005, No. 1423, § 4.

17-87-702. Certificate required.

In order to safeguard life and health, any person serving or offering to serve as a medication assistive person shall:

(1) Submit evidence that he or she is qualified to so serve; and

(2) Be certified as provided in this subchapter.

History. Acts 2005, No. 1423, § 4.

17-87-703. Designated facilities.

(a) The Arkansas State Board of Nursing shall designate the types of facilities that may use medication assistive persons.

(b)(1) Designated facilities may not be required to use medication assistive persons.

(2) However, if a designated facility elects to use medication assistive personnel, the facility shall notify the board in a manner prescribed by the board.

History. Acts 2005, No. 1423, § 4.

17-87-704. Qualifications.

(a) In order to be certified as a medication assistive person, an applicant shall submit to the Arkansas State Board of Nursing written evidence, verified by oath, that the applicant:

(1)(A) Is currently listed in good standing on the state's certified nurse aide registry;

(B) Has maintained registration on the state's certified nurse aide registry continuously for a minimum of one (1) year;

(C) Has completed at least one (1) continuous year of full-time experience as a certified nurse aide in this state;

(D) Is currently employed at a designated facility;

(E) Has a high school diploma or the equivalent;

(F) Has successfully completed a literacy and reading comprehension screening process approved by the board;

(G) Has successfully completed a medication assistive person training course of not less than one hundred (100) hours approved by the board; and

(H) Has successfully passed an examination on subjects the board determines; or

(2)(A) Has completed a portion of a nursing education program equivalent to the medication assistive person training course; and

(B) Passed the medication aide examination.

(b) The board may issue a certification as a medication assistive person by endorsement to an applicant who has been licensed or certified as a medication assistive person under the laws of another state or territory, if:

(1) In the opinion of the board, the applicant meets the qualifications of medication assistive persons in this state; and

(2) The board recommends certification.

(c) Any person holding a certification as a medication assistive person shall have the right to use the title "medication assistive person" and the abbreviation "M.A.P."

History. Acts 2005, No. 1423, § 4; added (a)(2), and redesignated the remaining subdivisions.

Amendments. The 2007 amendment

17-87-705. Scope of work.

(a)(1) A medication assistive person may perform the delegated nursing function of medication administration and related tasks in accordance with rules promulgated by the Arkansas State Board of Nursing.

(2) A medication assistive person shall perform medication administration and related tasks only:

(A) At a designated facility; and

(B) Under the supervision of a licensed nurse.

(3)(A) Medication administration shall be limited to the administration of nonprescription and legend drugs ordered by an authorized prescriber by the following methods:

- (i) Orally;
- (ii) Topically;
- (iii) Drops for eye, ear, or nose;
- (iv) Vaginally;
- (v) Rectally;
- (vi) Transdermally; and
- (vii) Via oral inhaler.

(B) Medication administration by a medication assistive person shall not include controlled substances.

(b) A medication assistive person shall not:

- (1) Receive, have access to, or administer any controlled substance;
- (2) Administer parenteral, enteral, or injectable medications;
- (3) Administer any substances by nasogastric or gastrostomy tubes;
- (4) Calculate drug dosages;
- (5) Destroy medication;
- (6) Receive orders, either in writing or verbally, for new or changed medications;
- (7) Transcribe orders from the medical record;
- (8) Order initial medications;
- (9) Evaluate medication error reports;
- (10) Perform treatments;
- (11) Conduct patient assessments or evaluations; or
- (12) Engage in patient teaching activities.

History. Acts 2005, No. 1423, § 4.

17-87-706. Renewal of certifications.

(a)(1) The Arkansas State Board of Nursing shall prescribe the procedure for the cyclical renewal of medication assistive person certifications.

(2) In each case, the board shall mail a notification for renewal to the medication assistive person at least thirty (30) days before the expiration date of the certification.

(b)(1) Upon receipt of the renewal application and the fee, the board shall verify the accuracy of the application.

(2)(A) If the board finds the application to be accurate, the board shall issue a certificate of renewal to the applicant.

(B) As a condition of certification renewal, a medication assistive person shall be:

- (i) Currently listed in good standing on the state's certified nurse aide registry; and
- (ii) Required to satisfactorily complete at least eight (8) hours of continuing medication education course work as required by the board.

(c) The renewal shall render the holder of the certificate a legal provider of medication assistive person services for the period stated in the certificate of renewal.

(d) Any medication assistive person who allows his or her certification to lapse by failing to renew the certification as provided in this section may be reinstated by the board on:

(1) Payment of the renewal fee plus a penalty; and

(2) Submission of evidence that the person currently meets the requirements to serve as a medication assistive person.

(e) Any person providing services as a medication assistive person during the time his or her certification has lapsed shall be considered to be providing services illegally and shall be subject to the penalties provided for violations of this subchapter.

History. Acts 2005, No. 1423, § 4.

17-87-707. Disciplinary actions.

(a) The Arkansas State Board of Nursing shall have sole authority to deny, suspend, revoke, or limit any medication assistive person certificate issued by the board or applied for in accordance with the provisions of this subchapter or to otherwise discipline a certificate holder upon proof that the person:

(1) Has been found guilty of or pleads guilty or nolo contendere to:

(A) Fraud or deceit in procuring or attempting to procure a medication assistive person certificate;

(B) Providing services as a medication assistive person without a valid certificate; or

(C) Committing a crime of moral turpitude;

(2) Is unfit or incompetent by reason of negligence, habits, or other causes;

(3) Is habitually intemperate or is addicted to the use of habit-forming drugs;

(4) Is mentally incompetent;

(5) Is guilty of unprofessional conduct;

(6) Has had a license, certificate, or registration revoked or suspended;

(7) Has been placed on probation or under disciplinary order in any jurisdiction;

(8) Has voluntarily surrendered a license, certification, or registration and has not been reinstated in any jurisdiction; or

(9) Has willfully or repeatedly violated any of the provisions of this subchapter.

(b) The board shall refuse to issue or shall revoke the certificate of any person who would be disqualified from employment under the provisions of § 20-33-213.

(c) Proceedings under this section shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2005, No. 1423, § 4; substituted “§ 20-33-213” for “§ 20-33-209, No. 762, § 2. 205” in (b).

Amendments. The 2009 amendment

17-87-708. Penalty.

(a)(1) It shall be a misdemeanor for any person to:

(A) Sell or fraudulently obtain or furnish any medication assistive person's certificate, renewal, or record or aid or abet in any such sale or fraud;

(B) Serve as a medication assistive person under cover of any certificate or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(C) Serve as a medication assistive person unless certified by the Arkansas State Board of Nursing;

(D) Use in connection with his or her name any of the following titles, names, or initials if the user is not properly certified under this subchapter:

(i) Medication assistive person;

(ii) M.A.P.;

(iii) Medication aide;

(iv) Medication technician;

(v) Medication assistant;

(vi) Certified medication aide;

(vii) C.M.A.;

(viii) Medication assistant – Certified;

(ix) MA – C; or

(x) Any other name, title, or initials that would cause a reasonable person to believe the user is certified under this subchapter;

(E) Serve as a medication assistive person during the time his or her certification is suspended;

(F) Conduct an education program for the preparation of medication assistive persons unless the program has been approved by the board; or

(G) Otherwise violate any provisions of this subchapter.

(2)(A) A misdemeanor under subdivision (a)(1) of this section shall be punishable by a fine of not less than twenty-five dollars (\$25.00) or more than five hundred dollars (\$500).

(B) Each subsequent offense shall be punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment of not more than thirty (30) days, or by both a fine and imprisonment.

(b)(1) After providing notice and a hearing, the board may levy civil penalties in an amount not to exceed one thousand dollars (\$1,000) against a person or entity for each violation of this subchapter or regulations promulgated under this subchapter.

(2) Each day of violation shall be a separate offense.

(c) Unless a penalty assessed under this section is paid within fifteen (15) calendar days following the date for an appeal from the order, the board may file suit in Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

(d) The penalties permitted in this section shall be in addition to other penalties that may be imposed by the board under this subchapter.

History. Acts 2005, No. 1423, § 4; inserted present (a)(1)(D)(viii) and (ix), 2007, No. 206, § 2.

Amendments. The 2007 amendment and redesignated the following subdivision accordingly.

17-87-709. Injunction.

(a) The Pulaski County Circuit Court is vested with jurisdiction and power to enjoin the unlawful provision of medication assistive person services in any county of the State of Arkansas in a proceeding initiated by the Arkansas State Board of Nursing, any member of the board, or any citizen in this state.

(b)(1) The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this subchapter.

(2) The remedy of injunction is to be in addition to liability for criminal prosecution.

History. Acts 2005, No. 1423, § 4.

17-87-710. Medication Assistive Person Advisory Committee.

(a)(1) The Medication Assistive Person Advisory Committee is created as an advisory committee to the Arkansas State Board of Nursing.

(2) The committee shall assist the board in implementing the provisions of this subchapter regarding medication assistive persons.

(b) The board shall appoint six (6) members to be approved by the Governor who have the following qualifications:

(1) Two (2) members shall be certified medication assistive persons;

(2) One (1) member shall be a licensed nursing home administrator who has worked in that capacity for at least five (5) years;

(3) One (1) member shall be a registered nurse who has been in a practice using certified nurse aides for at least five (5) years;

(4) One (1) member shall be a lay person representing the interest of consumers of health care services; and

(5) One (1) member shall be a nursing faculty member of an Arkansas nursing education program.

(c) Members shall serve three-year terms.

(d) The board may remove any committee member after notice and hearing for incapacity, incompetence, neglect of duty, or malfeasance in office.

(e) The members of the committee shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-902.

History. Acts 2005, No. 1423, § 4; substituted “six (6)” for “five (5)” in (b); 2007, No. 206, § 3. added (b)(5); and made related changes.

Amendments. The 2007 amendment

17-87-711. Applicability of subchapter.

Nothing in this subchapter relieves a nurse from the responsibility of assessing each patient daily.

History. Acts 2005, No. 1423, § 4.

CHAPTER 88

OCCUPATIONAL THERAPISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REGULATORY AGENCIES.
3. LICENSING.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-87-101 et seq.

Effective Dates. Acts 1977, No. 381, § 22: Mar. 7, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the protection of the residents of this state that provision be made for the appropriate examination, licensure and regulation of persons engaging in practice

as occupational therapists and that this act is designed to provide for such examination, licensure and regulation and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Medical malpractice: Who are "health

care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice. 12 A.L.R.5th 1.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-88-101. Short title.
- 17-88-102. Definitions.
- 17-88-103. Exceptions.

SECTION.

- 17-88-104. False oath or affirmation — Penalty.
- 17-88-105. Disposition of funds.

17-88-101. Short title.

This chapter shall be known and may be cited as the "Arkansas Occupational Therapy Practice Act".

History. Acts 1977, No. 381, § 1; A.S.A. 1947, § 72-1901.

17-88-102. Definitions.

As used in this chapter:

(1) "Association" means the Arkansas Occupational Therapy Association;

(2) "Board" means the Arkansas State Medical Board;

(3) "Committee" means the Arkansas State Occupational Therapy Examining Committee;

(4) "Occupational therapist" means a person licensed to practice occupational therapy, whose license is in good standing;

(5)(A) "Occupational therapy" means the evaluation and treatment of individuals whose ability to cope with the tasks of living is threatened or impaired by developmental deficits, the aging process, poverty or cultural differences, environmental or sensory deprivation, physical injury or illness, or psychological and social disability.

(B) The treatment utilizes task-oriented activities to prevent or correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual so that he or she might perform tasks normally performed at his or her stage of development.

(C) Specific occupational therapy techniques include, but are not limited to:

(i) Instruction in activities of daily living, design, fabrication, application, recommendation, and instruction in the use of selected orthotic or prosthetic devices and other adaptive equipment;

(ii) Perceptual-motor and sensory integrative activities;

(iii) The use of specifically designed crafts;

(iv) Exercises to enhance functional performance; and

(v) Prevocational evaluation and treatment.

(D) The techniques are applied in the treatment of individual patients or clients, in groups, or through social systems;

(6) "Occupational therapy aide" or "worker" means a person who aids a licensed occupational therapist in the practice of occupational therapy, whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy;

(7) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the frequent and regular supervision by or with consultation with an occupational therapist, whose license is in good standing. The definition of "frequent" and "regular" will be established by the Arkansas State Occupational Therapy Examining Committee; and

(8) "Person" means any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this chapter.

History. Acts 1977, No. 381, § 2; A.S.A. 1947, § 72-1902.

Cross References. Definitions of "regular" and "frequent," § 17-88-202.

17-88-103. Exceptions.

Nothing in this chapter shall be construed as preventing or restricting the practice, services, or activities of:

(1) Any person licensed in this state by any other law from engaging in the profession or occupation for which he or she is licensed;

(2) Any person employed as an occupational therapist or occupational therapy assistant by the United States, if the person provides occupational therapy solely under the direction or control of the organization by which he or she is employed;

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, if such activities and services constitute a part of a supervised course of study and if such a person is designated by a title which clearly indicates his or her status as a student or trainee;

(4) Any person fulfilling the supervised field work experience requirements of § 17-88-302, if such activities and services constitute a part of the experiences necessary to meet the requirements of that section;

(5) Any person employed by or working under the direct supervision of an occupational therapist as an occupational therapy aide; or

(6) Any person licensed as an occupational therapist in another state, United States possession, or country or who has received at least a baccalaureate degree or its equivalent in occupational therapy and who is in this state for the purpose of:

(A) Consultation, provided the practice is limited to consultation; or

(B) Conducting a teaching clinical demonstration in connection with a program of basic clinical education, graduate education, or postgraduate education in an approved school of occupational therapy or its affiliated clinical facilities or health care agencies or before a group of licensed occupational therapists.

History. Acts 1977, No. 381, § 18;
A.S.A. 1947, § 72-1918.

17-88-104. False oath or affirmation — Penalty.

(a) A person who makes a willfully false oath or affirmation in any case in which an oath or affirmation is required by this chapter or who obtains or attempts to obtain registration by any fraudulent representation shall be guilty of a misdemeanor.

(b) Upon conviction, he or she shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned in the county jail for a period of not less than one (1) month nor more than six (6) months, or be both fined and imprisoned.

History. Acts 1977, No. 381, § 17;
A.S.A. 1947, § 72-1917.

17-88-105. Disposition of funds.

All fees and penalties provided for in this chapter shall be received by the Arkansas State Medical Board, shall be deposited into the State Treasury, shall be credited to the State Medical Board — Occupational Therapy Fund, which is created, and shall be expended by the board in accordance with the appropriation by the General Assembly.

History. Acts 1977, No. 381, § 20;
A.S.A. 1947, § 72-1920.

SUBCHAPTER 2 — REGULATORY AGENCIES

SECTION.

17-88-201. Arkansas State Medical Board.

Therapy Examining Committee.

17-88-202. Arkansas State Occupational

Effective Dates. Acts 1983, No. 131, § 6, and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is

hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-88-201. Arkansas State Medical Board.

(a) The Arkansas State Medical Board shall administer the provisions of this chapter.

(b) With the advice and assistance of the Arkansas State Occupational Therapy Examining Committee, the board shall pass upon the qualification of applicants for licensure, regulate and supervise all

examinations, determine the applicants who successfully pass the examination, and license the applicants who meet the qualifications provided in this chapter.

(c) In addition to the other powers and duties set out elsewhere in this chapter, the board shall:

(1) Adopt and put into effect reasonable rules and regulations to carry this chapter into effect;

(2) Investigate reported violations of this chapter and take such steps as may be necessary to enforce this chapter;

(3) Keep a record of its proceedings under this chapter and of all persons registered by it on a register which shall show the name of every registrant, his or her last known place of business, his or her last known place of residence, and the date and number of his or her license; and

(4) Compile a list of all occupational therapists who are licensed to practice occupational therapy in the State of Arkansas. The list shall be printed annually. It shall furnish a copy of the list to all persons requesting it upon the payment of a fee as may be fixed by the board to compensate for the cost of printing the list.

History. Acts 1977, No. 381, §§ 3, 5;
A.S.A. 1947, §§ 72-1903, 72-1905.

17-88-202. Arkansas State Occupational Therapy Examining Committee.

(a) There is created an Arkansas State Occupational Therapy Examining Committee to assist the Arkansas State Medical Board in carrying out the provisions of this chapter.

(b)(1) The committee shall consist of six (6) members appointed by the Governor for terms of five (5) years, each of whom is a citizen of the United States and a resident of the State of Arkansas. One (1) member shall be a member of a minority race.

(2) Four (4) members shall be persons licensed under this chapter who have had at least three (3) years' experience in the practice of occupational therapy in this state and shall be appointed upon the advice and recommendation of the Arkansas Occupational Therapy Association.

(3) One (1) member shall be a resident of this state who is not engaged in or licensed to practice as an occupational therapist.

(4) One (1) member shall not be actively engaged in or retired from the profession of occupational therapy, shall be sixty (60) years of age or older, and shall represent the elderly. This member shall be appointed from the state at large, subject to the confirmation of the Senate. He or she will be a full voting member but shall not participate in the grading of examinations.

(c) The consumer representative position and the representative of the elderly position may not be filled by the same person.

(d) Vacancies shall be filled in the same manner for the unexpired term.

(e) The members of the committee may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(f) The committee is directed by this chapter to define “regular” and “frequent” as they relate to the supervision of occupational therapy assistants and to write and publish a code of ethics for the practice of occupational therapy and rules defining unprofessional conduct and gross negligence.

(g) In addition, the committee may be delegated by the board such powers and duties as it may deem proper.

History. Acts 1977, No. 381, §§ 4, 6, 20; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 72-1904, 72-1906, 72-1920; Acts 1997, No. 250, § 161.

A.C.R.C. Notes. Prior to its 1997 amendment, subsection (e) read as follows: “(e) The members of the committee shall receive thirty-five dollars (\$35.00) per day for each day of attendance at meetings of the committee. In addition, they shall be entitled to mileage for attending meetings of the committee at the rate prescribed by law or regulation for state employees.

“(1) The committee shall meet with the board at its regular meetings, assist in

regulating and supervising all examinations, establish reasonable fees for examination and licensure, and call special meetings at such times as it deems necessary.

“(2) A majority of the committee shall have the power to call a special meeting.”

Publisher’s Notes. The terms of the members of the Arkansas State Occupational Therapy Examining Committee, other than the representative of the elderly, are arranged so that one term expires every year.

Cross References. Definitions generally, § 17-88-102.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-88-301. License required.
- 17-88-302. Qualifications of applicants.
- 17-88-303. Issuance pursuant to examination.
- 17-88-304. Examinations.
- 17-88-305. Reciprocity.
- 17-88-306. Temporary licenses.
- 17-88-307. Reregistration.
- 17-88-308. Display of license or renewal certificate.

SECTION.

- 17-88-309. Denial, revocation, or suspension — Grounds.
- 17-88-310. Denial, revocation, or suspension — Proceedings.
- 17-88-311. Unlawful practice — Injunction.
- 17-88-312. Unlawful use of professional title — Penalty.

Cross References. Continuing education requirements, § 17-80-104.

17-88-301. License required.

No person shall practice occupational therapy or hold himself or herself out as an occupational therapist or occupational therapy assis-

tant or as being able to practice occupational therapy or to render occupational therapy services in the state unless he or she is licensed in accordance with the provisions in this chapter.

History. Acts 1977, No. 381, § 18;
A.S.A. 1947, § 72-1918.

17-88-302. Qualifications of applicants.

Each applicant must meet the following conditions:

(1) The applicant must be an individual at least eighteen (18) years of age;

(2) The applicant must be of good moral character;

(3)(A) The applicant must have successfully completed the academic requirements of an educational program in occupational therapy with concentration in biologic or physical science, psychology, and sociology, and with education in selected manual skills.

(B) For an occupational therapist, the program shall be accredited by the American Medical Association in collaboration with the American Occupational Therapy Association and shall lead to the awarding of a bachelor's or master's level degree or advanced standing certificate in occupational therapy.

(C) For an occupational therapy assistant, the program shall be approved by the American Occupational Therapy Association and shall lead to the awarding of an associate level degree in occupational therapy;

(4) The applicant must have successfully completed a period of supervised field work experience at a recognized educational institution where he or she met the following academic requirements:

(A) For an occupational therapist, a minimum of six (6) months of supervised field work experience is required;

(B) For an occupational therapy assistant, a minimum of two (2) months of supervised field work experience at an approved facility other than the one at which the person was previously employed, if applicable, is required; and

(5) The applicant must have passed an examination conducted by the Arkansas State Medical Board as provided in § 17-88-304.

History. Acts 1977, No. 381, § 7; A.S.A. 1947, § 72-1907; Acts 1993, No. 1219, § 16.

17-88-303. Issuance pursuant to examination.

(a) The Arkansas State Medical Board shall register as an occupational therapist and shall issue a license to any person who satisfactorily passes the examination provided for in § 17-88-304 and who otherwise meets the requirements for qualifications contained in this subchapter and pays a fee as determined by the Arkansas State Occupational Therapy Examining Committee.

(b) The board shall register as an occupational therapy assistant and shall issue a license to any person who satisfactorily passes the examination provided for in § 17-88-304 and who otherwise meets the qualifications contained herein and pays a fee as determined by the committee.

History. Acts 1977, No. 381, § 10;
A.S.A. 1947, § 72-1910.

17-88-304. Examinations.

(a)(1) Any person applying for licensure, in addition to demonstrating his or her eligibility in accordance with the requirements of § 17-88-302, shall make application to the Arkansas State Medical Board for examination at least thirty (30) days prior to the date of examination upon a form and in a manner as the board shall prescribe.

(2) The application shall be accompanied by a fee to be determined by the Arkansas State Occupational Therapy Examining Committee. The fee shall not be refunded.

(b)(1) An applicant who fails an examination may make reapplication for reexamination accompanied by the prescribed fee.

(2) Any applicant who fails three (3) examinations must take additional educational work in the areas of weakness as deemed necessary by the committee before being eligible for reexamination.

(c)(1) Each applicant for licensure under this chapter shall be examined by the board to test his or her knowledge of the basic and clinical sciences relating to occupational therapy and to occupational therapy theory and practice.

(2) The knowledge tested will include the applicant's professional skills and judgment in the utilization of occupational therapy techniques and methods and any other subjects the board, with the advice of the committee, may deem useful to determine the applicant's fitness to practice.

(3) The committee shall establish standards for acceptable performance.

(d)(1) Applicants for licensure shall be examined at a time and place and under such supervision as the board may determine.

(2) Examination shall be given at least two (2) times each year at such places within this state as the board may determine. The board shall give reasonable public notice of the examination in accordance with its rules at least sixty (60) days prior to their administration and shall notify by mail all individual examination applicants of the time and place of their administration.

(e) Applicants may obtain their examination scores and may review their papers in accordance with such rules as the board may establish.

History. Acts 1977, No. 381, § 8; A.S.A.
1947, § 72-1908.

17-88-305. Reciprocity.

(a) A licensed occupational therapist who has been issued a license to practice occupational therapy in another state or territory whose requirements for registration and licensure were equal at the time of his or her registration to the requirements in this chapter may be registered and issued a license by the Arkansas State Medical Board, provided that the state or territory from which the applicant comes accords a similar privilege of registration and licensure to persons registered and licensed in the State of Arkansas by the board.

(b) The issuance of a license by reciprocity by the board shall be at the sole discretion of the board, and the board may provide such rules and regulations governing admission as it may deem necessary or desirable.

(c) Any occupational therapist or occupational therapy assistant who has been certified by the American Occupational Therapy Association and who has been in continuous practice for the past five (5) years and who comes to Arkansas from a state presently not granting reciprocity or from a state not requiring licensing shall be eligible for licensing in Arkansas.

History. Acts 1977, No. 381, § 12;
A.S.A. 1947, § 72-1912.

17-88-306. Temporary licenses.

(a) The Secretary of the Arkansas State Medical Board shall issue a temporary license without examination to practice occupational therapy in association with an occupational therapist licensed under this chapter to persons who have completed the education and experience requirements of this chapter and who are required to be licensed in order to obtain employment as an occupational therapist.

(b) The temporary license shall be valid until the date on which the results of the next qualifying examination have been made public.

(c) This temporary license shall only be renewed one (1) time if the applicant has not passed the examination or if the applicant has failed to take the qualifying examination, unless that failure is justified by good cause acceptable at the discretion of the secretary.

History. Acts 1977, No. 381, § 9; A.S.A.
1947, § 72-1909.

17-88-307. Reregistration.

(a)(1) A renewal or reregistration fee which shall be determined by the Arkansas State Occupational Therapy Examining Committee shall be paid to the Arkansas State Medical Board by each occupational therapist who holds a license to practice occupational therapy in the State of Arkansas.

(2) The committee will also establish additional requirements for license renewal which provide evidence of continued competency.

(b) The reregistration fee shall be paid before or during the birth month of the license holder beginning in 1998, and each year thereafter. During the implementation year of 1998, fees shall be prorated.

(c)(1) Failure to reregister and pay the reregistration fee by the last day of the birth month of the license holder shall cause the license of any person so failing to pay the registration fee to expire automatically.

(2) Any delinquent license of less than five (5) years may be reinstated by paying all delinquent fees and a penalty, to be determined by the committee, for each year or part of a year it has been delinquent.

(3) Any person who shall fail to reregister and pay the annual license fee for five (5) consecutive years shall be required to be reexamined by the board before his or her license may be reinstated.

History. Acts 1977, No. 381, § 13;
A.S.A. 1947, § 72-1913; Acts 1997, No.
313, § 1.

17-88-308. Display of license or renewal certificate.

Each licensee shall display his or her license and renewal certificate in a conspicuous place in the principal office where he or she practices occupational therapy.

History. Acts 1977, No. 381, § 11;
A.S.A. 1947, § 72-1911.

17-88-309. Denial, revocation, or suspension — Grounds.

(a) After notice and hearing, the Arkansas State Medical Board may deny or refuse to renew a license or may suspend or revoke a license when the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public.

(b) Unprofessional conduct shall include:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(2) Being guilty of unprofessional conduct or gross negligence as defined by rules established by the Arkansas State Occupational Therapy Committee or violating the code of ethics adopted and published by the committee;

(3) Treating, or undertaking to treat, ailments of human beings otherwise than by occupational therapy, as authorized by this chapter;

(4) Being convicted of a crime, other than minor offenses defined as “minor misdemeanors”, “violations”, or “offenses”, in any court if the acts for which the applicant or licensee was convicted are found by the board to have a direct bearing on whether he or she should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant; and

(5) Using any narcotic drug or alcohol to an extent that impairs the ability to perform the work of an occupational therapist or occupational therapy assistant with safety to the public.

(c) The procedure hereunder on all refusals, revocations, and suspensions of license shall be as prescribed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1977, No. 381, § 14;
A.S.A. 1947, § 72-1914.

17-88-310. Denial, revocation, or suspension — Proceedings.

(a)(1) Any person may file a complaint with the Arkansas State Medical Board against any person having a license to practice occupational therapy in this state charging the person with having violated the provisions of § 17-88-309.

(2) The complaint shall set forth a specification of charges in sufficient detail so as to disclose to the accused fully and completely the alleged acts of misconduct for which he or she is charged.

(b) When a complaint is filed, the Secretary of the Arkansas State Medical Board shall mail a copy to the accused by registered mail at his or her last address of record. With the copy shall be a written notice of the time and place of hearing and advising him or her that he or she may be present in person and by counsel, if he or she so desires, to offer evidence and be heard in his or her defense.

(c)(1) At the time and place fixed for a hearing before the board, the board shall receive evidence upon the subject matter under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his or her defense.

(2) The board shall not be bound by strict or technical rules of evidence but shall consider all evidence fully and fairly. However, all oral testimony considered by the board must be under oath.

(3) All hearings and appeals shall be conducted in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) All evidence considered by the board shall be construed so as not to deprive any person of his or her rights without full, fair, and impartial hearing.

History. Acts 1977, No. 381, § 15;
A.S.A. 1947, § 72-1915.

17-88-311. Unlawful practice — Injunction.

(a) The courts of record in this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of occupational therapy in the county in which the alleged unlawful practice occurred or in which the defendant resides.

(b) The issuance of an injunction shall not relieve a person from criminal prosecution for violation of this chapter, but the remedy of injunction shall be in addition to criminal prosecution.

History. Acts 1977, No. 381, § 19;
A.S.A. 1947, § 72-1919.

17-88-312. Unlawful use of professional title — Penalty.

(a)(1) It is unlawful for any person who is not licensed under this chapter as an occupational therapist or an occupational therapy assistant or whose registration has been suspended or revoked, to use, in connection with his or her name or place of business, the words “occupational therapist”, “licensed occupational therapist”, “occupational therapist registered”, “occupational therapy assistant”, “licensed occupational therapy assistant”, “certified occupational therapy assistant”, or the letters “O.T.”, “L.O.T.”, “O.T.R.”, “O.T.A.”, “L.O.T.A.”, or “C.O.T.A.”, or any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or an occupational therapy assistant.

(2) It is also unlawful for any such person, in any way, orally, in writing, in print, or by sign, directly or by implication, to represent himself or herself as an occupational therapist or an occupational therapy assistant.

(b) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned in the county jail for a period of not less than one (1) month nor more than six (6) months, or be both fined and imprisoned. Each day of violation shall constitute a separate offense.

History. Acts 1977, No. 381, § 16;
A.S.A. 1947, § 72-1916.

CHAPTER 89

OPHTHALMIC DISPENSERS

SUBCHAPTER

1. GENERAL PROVISIONS.
2. ARKANSAS BOARD OF DISPENSING OPTICIANS.
3. LICENSING AND REGISTRATION.
4. REGULATION OF PRACTICE.

A.C.R.C. Notes. References to “this chapter” in §§ 17-89-201 — 17-89-204 and subchapters 1, 3 and 4 of this chapter may not apply to § 17-89-205, which was

enacted subsequently.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-88-101 et seq.

RESEARCH REFERENCES

ALR. Physician’s or other healer’s conduct in connection with defense of or re-

sistance to malpractice action as ground for revocation of license or other disciplin-

ary action. 44 A.L.R.4th 248.
Am. Jur. 61 Am. Jur. 2d, Phys. & S.,
§ 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
17-89-101. Short title.
17-89-102. Definitions.
17-89-103. Exceptions.
17-89-104. Practice of optometry or medi-
cine prohibited.

SECTION.
17-89-105. Penalties.
17-89-106. Injunctions.

Cross References. Optometrists,
§ 17-90-101 et seq.
Effective Dates. Acts 1981, No. 589,
§ 25: became law without Governor's sig-
nature, Mar. 19, 1981. Emergency clause
provided: "It is hereby found and deter-
mined by the Seventy-Third General As-
sembly that the public has been harmed
because there is presently no adequate
law or regulation protecting the public

from those persons who are untrained and
unqualified and are in the business of
dispensing ophthalmic materials. There-
fore, an emergency is hereby declared to
exist and this act being necessary for the
immediate preservation of the public
peace, health and safety shall be in full
force and effect from and after passage
and approval."

17-89-101. Short title.

This chapter shall be known and cited as the "Ophthalmic Dispensing
Act".

History. Acts 1981, No. 589, § 1; A.S.A.
1947, § 72-2101.

17-89-102. Definitions.

As used in this chapter:

- (1) "Apprentice dispensing optician" means an individual registered
with the Arkansas Board of Dispensing Opticians to work under the
supervision of a licensed or registered dispensing optician, a physician
skilled in disease of the eye, or an optometrist licensed by this state;
- (2) "Board" means the Arkansas Board of Dispensing Opticians;
- (3) "Licensed dispensing optician" means any person licensed by the
board to engage in ophthalmic dispensing;
- (4)(A) "Ophthalmic dispensing" means the preparation of laboratory
work orders, verification, and dispensing of spectacle lenses, spec-
tacles, eyeglasses, or parts thereof to the intended wearer on a
written prescription from a licensed physician skilled in disease of
the eye or from a licensed optometrist.

(B) "Ophthalmic dispensing" shall include:

- (i) The measuring, fitting, adapting, and adjusting of spectacle lenses, spectacles, eyeglasses, or parts thereof to the human face;
- (ii) The preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabrication of eyewear;
- (iii) The verification of the quality of finished spectacle lenses, spectacles, or eyeglasses; and
- (iv) The adjustment or repair of spectacle frames to the human face.

(C) The prescribing, adapting, fitting, duplicating, dispensing, modifying, selling, or supplying of contact lenses for or to the human eye is specifically excluded;

(5) "Person" shall include individuals, partnerships, firms, corporations, professional corporations, unincorporated associations, or any of the foregoing;

(6) "Registered dispensing optician" means any person registered by the board to engage in ophthalmic dispensing; and

(7) "Supervision" means the direct personal physical provision of direction and control through personal inspection.

History. Acts 1981, No. 589, § 2; A.S.A. 1947, § 72-2102.

17-89-103. Exceptions.

(a) Except as expressly provided otherwise in this chapter, nothing in this chapter shall apply to persons who sell glasses, spectacles, lenses, frames, mountings, or prisms at wholesale on individual prescriptions to licensed optometrists, physicians, or dispensing opticians, nor shall it prohibit the sale of ready-made eyeglasses and spectacles when sold as merchandise at any established place of business where no attempt is made to practice optometry or opticianry.

(b) Nothing in this chapter shall prohibit an employee of an Arkansas-licensed optometrist or an Arkansas-licensed physician skilled in disease of the eye from performing any of the acts described in § 17-89-102(4) when the acts are performed in the office of an Arkansas-licensed optometrist or an Arkansas-licensed physician skilled in disease of the eye. The employees are not required to be registered or licensed under the provisions of this chapter.

(c) The provisions of this chapter shall not apply to licensed optometrists or physicians skilled in disease of the eye, except as stated in this chapter. It is the specific intent of the General Assembly that this subsection supplement, not repeal, existing acts of Arkansas.

History. Acts 1981, No. 589, §§ 17, 21, 23; A.S.A. 1947, §§ 72-2117, 72-2121, 72-2123.

17-89-104. Practice of optometry or medicine prohibited.

(a) With the exception of those acts listed in § 17-89-102(4), it shall be unlawful for any person except a licensed optometrist or licensed physician skilled in disease of the eye to engage in the practice of optometry or to do any act or part thereof defined in this or any other state law as the practice of optometry.

(b) It is likewise unlawful for any person except a licensed physician to engage in the practice of medicine or to do any act or part thereof defined in this or any other state law as the practice of medicine.

(c) Nothing in this chapter shall be construed to authorize or permit any licensed or registered dispensing optician or any other person except a licensed optometrist or licensed physician skilled in disease of the eye to undertake or hold himself or herself out as being able:

(1) To examine eyes by any objective or subjective method or exercise eyes;

(2) To undertake by any method or means the measurement of the cornea of the human eye; or

(3) To examine, prescribe, diagnose, treat, or correct for visual deficiency.

(d) The prescribing, adapting, fitting, duplicating, dispensing, modifying, selling, or supplying of contact lenses for or to the human eye is specifically prohibited except when done by a licensed optometrist or licensed physician skilled in disease of the eye.

History. Acts 1981, No. 589, §§ 3, 12;
A.S.A. 1947, §§ 72-2103, 72-2112.

17-89-105. Penalties.

(a) Any person who violates any provision of this chapter or who, other than those persons specifically excluded from the provisions of this chapter, provides ophthalmic dispensing services to the public without a certificate of licensure or certificate of registration under this chapter or who engages in the business after his or her certificate of licensure or registration has been suspended or revoked shall be guilty of a violation and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(b) Each day of violation shall constitute a separate offense and be punishable as such.

History. Acts 1981, No. 589, § 20;
A.S.A. 1947, § 72-2120; Acts 2005, No.
1994, § 86.

17-89-106. Injunctions.

(a) The courts of record in this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful business of ophthalmic dispensing or any violation of the provisions of this chapter, with the action being brought in the county in which the

alleged unlawful practice or violation occurred or in which the defendant resides, upon the complaint of any individual.

(b) The issuance of an injunction by a court shall not relieve a person from criminal prosecution for violation of this chapter, but the remedy of injunction shall be in addition to criminal prosecution.

History. Acts 1981, No. 589, § 19; A.S.A. 1947, § 72-2119.

SUBCHAPTER 2 — ARKANSAS BOARD OF DISPENSING OPTICIANS

SECTION.

17-89-201. Creation — Members.

17-89-202. Meetings — Officers.

17-89-203. Powers and duties.

SECTION.

17-89-204. Financial reporting — Disposition of funds.

17-89-205. Refund to expenditure.

Effective Dates. Acts 1981, No. 589, § 25: became law without Governor's signature, Mar. 19, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly that the public has been harmed because there is presently no adequate law or regulation protecting the public from those persons who are untrained and unqualified and are in the business of dispensing ophthalmic materials. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 231, § 7: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work ir-

reparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and

this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003.”

17-89-201. Creation — Members.

(a) There is created the Arkansas Board of Dispensing Opticians which shall be responsible for administering the specific duties as set out in this chapter.

(b)(1) The board shall be composed of nine (9) members appointed by the Governor to three-year terms.

(2)(A) Three (3) members of the board shall be practicing licensed or registered dispensing opticians appointed by the Governor from a list of six (6) names submitted to him or her by the Arkansas Association of Dispensing Opticians.

(B) One (1) of the three (3) members shall be an employee of either an Arkansas-licensed ophthalmologist or optometrist.

(3) One (1) member of the Arkansas Board of Dispensing Opticians shall be a member of the State Board of Optometry.

(4) One (1) member of the Arkansas Board of Dispensing Opticians shall be a licensed optometrist appointed by the Governor from a list of three (3) names submitted by the Arkansas Optometric Association.

(5) Two (2) members of the Arkansas Board of Dispensing Opticians shall be licensed ophthalmologists appointed by the Governor from a list of six (6) names submitted by the Ophthalmology Section of the Arkansas Medical Society.

(6) One (1) member of the Arkansas Board of Dispensing Opticians shall be a consumer.

(7)(A) One (1) member of the Arkansas Board of Dispensing Opticians shall represent the elderly.

(B) The representative of the elderly shall:

(i) Be sixty (60) years of age or older;

(ii) Not be actively engaged in or retired from the profession of ophthalmic dispensing;

(iii) Be appointed from the state at large, subject to confirmation by the Senate; and

(iv) Be a full voting member but shall not participate in grading examinations.

(c) The consumer board member position and the representative of the elderly position may not be filled by the same person.

(d) Terms shall begin on the first day of the fiscal year and end on the last day of the fiscal year when the term expires.

(e)(1) In the event of a vacancy during a board member's term, the Governor shall appoint a person to fill that vacancy.

(2) If the vacating member was an optician, the Governor shall make his or her selection from a list of three (3) names submitted by the opticians association.

(3) If the vacating member was an optometrist, the Governor shall make his or her selection from a list of three (3) names submitted by the President of the State Board of Optometry.

(4) If the vacating member was an ophthalmologist, the Governor shall make his or her selection from a list of three (3) names submitted by the Ophthalmology Section of the Arkansas Medical Society.

(f) Board members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1981, No. 589, § 4; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 72-2104; Acts 1993, No. 1087, § 1; 1997, No. 250, § 162; 1999, No. 524, §§ 1, 2; 2001, No. 1553, § 26.

Publisher's Notes. The terms of the

members of the Arkansas Board of Dispensing Opticians, other than the representative of the elderly, are arranged so that the terms of three members expire in one year, two expire in the next year, and two expire in the third year.

17-89-202. Meetings — Officers.

(a) The Arkansas Board of Dispensing Opticians shall meet at least two (2) times each year, and at its first regular meeting each year shall elect a chair, vice chair, and secretary-treasurer.

(b) Each officer shall be elected for a term of one (1) year. If an officer is removed or resigns during his or her term of office, the board shall elect a successor for the balance of the unexpired term of office.

(c)(1) The secretary-treasurer shall perform those administrative duties assigned him or her by the board and shall execute a bond for the state in a sum to be fixed by the board conditioned on the faithful performance of the duties of his or her office.

(2) The board shall outline the duties of the secretary-treasurer and fix his or her compensation, per diem, mileage, and other expense moneys in accordance with applicable Arkansas laws and regulations.

History. Acts 1981, No. 589, §§ 4, 5; A.S.A. 1947, §§ 72-2104, 72-2105.

A.C.R.C. Notes. The operation of subdivision (c)(1) of this section was suspended by adoption of a self-insured fidelity bond program for public officers,

officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

17-89-203. Powers and duties.

(a) The Arkansas Board of Dispensing Opticians shall:

(1)(A) Administer, coordinate, and enforce the provisions of this chapter, evaluate qualifications and supervise the examination of applicants for licensure or registry under this chapter, and investigate complaints, allegations, and charges of practices violating the provisions of this chapter or rules adopted pursuant to this chapter.

(B) In evaluating qualifications and supervising the examination of applicants for licensure or registry under this chapter, verify an applicant's qualifications, establish the format and content of examination procedures, administer both the practical and written exami-

nations at least one (1) time each year, and issue a certificate of licensure or certificate of registry to each applicant successfully meeting the qualifications and passing the examination;

(2) Establish annually a schedule of examination and license fees based on the Arkansas Board of Dispensing Opticians' financial requirements for the ensuing year;

(3) Compile and maintain a book of licensure and a book of registry of all dispensing opticians who are licensed or registered to engage in the business of ophthalmic dispensing in the State of Arkansas, which shall be updated annually. The Arkansas Board of Dispensing Opticians shall annually furnish a copy of the books to the State Board of Optometry and the Ophthalmology Section of the Arkansas Medical Society;

(4) Register on an annual basis apprentice dispensing opticians together with the licensed or registered dispensing optician by whom they are employed;

(5) Prepare and present an annual report of administration, licensure, registry, and investigation to the State Board of Optometry and to the Ophthalmology Section of the Arkansas Medical Society;

(6) Establish by rules those acts on the part of any person licensed or registered under this chapter which shall constitute improper conduct and grounds for revocation or suspension of a license or registry or refusal to renew the license or registry;

(7) Investigate reported violations of this chapter and rules adopted pursuant to this chapter and take such steps as may be necessary to enforce this chapter and the rules;

(8) Conduct hearings and keep such records and minutes as are necessary for the orderly dispatch of its functions. The Arkansas Board of Dispensing Opticians shall provide notice to appropriate persons in the manner it considers appropriate of the times and places of all hearings authorized under this chapter;

(9) Adopt rules and regulations commensurate with the policies of this chapter and for the purpose of carrying this chapter into effect, including, but not limited to, rules which establish ethical standards of ophthalmic dispensing practices, application procedures, and procedures for investigating complaints. Following their adoption, the rules shall govern and control the business conduct of every person licensed or registered under this chapter in this state engaged in ophthalmic dispensing; and

(10) Have the discretion to adopt an official seal.

(b) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to all authority and procedures of the Arkansas Board of Dispensing Opticians.

History. Acts 1981, No. 589, § 6; A.S.A. 1947, § 72-2106; Acts 1993, No. 1087, § 4; 1999, No. 524, § 3.

17-89-204. Financial reporting — Disposition of funds.

(a) The Arkansas Board of Dispensing Opticians shall report quarterly to the Department of Finance and Administration the source of all revenue received by it pursuant to this chapter during the preceding quarter.

(b) All appropriate expenses incurred by the board in the administration of the provisions of this chapter shall be paid when vouchers relating to the expenses are exhibited as having been approved by the board.

(c) There is created the Board of Dispensing Opticians Fund on the books of the Treasurer of State. All moneys collected by the board shall be deposited as special revenues to the credit of that fund.

History. Acts 1981, No. 589, § 5; A.S.A. 1947, § 72-2105.

17-89-205. Refund to expenditure.

Fines collected by the Arkansas Board of Dispensing Opticians shall be deposited into the Board of Dispensing Opticians Fund in the State Treasury as a refund to expenditure for the year in which the deposit is made.

History. Acts 2003, No. 231, § 4.

A.C.R.C. Notes. References to “this chapter” in §§ 17-89-201 — 17-89-204

and subchapters 1, 3 and 4 of this chapter may not apply to this section, which was enacted subsequently.

SUBCHAPTER 3 — LICENSING AND REGISTRATION

SECTION.

- 17-89-301. License or registration required.
- 17-89-302. Qualifications — Licensed dispensing opticians.
- 17-89-303. Qualifications — Registered dispensing opticians.
- 17-89-304. Examinations.
- 17-89-305. Reciprocity.

SECTION.

- 17-89-306. Dispensers from nonlicensing states.
- 17-89-307. Certificates — Renewal.
- 17-89-308. Continuing education program.
- 17-89-309. Denial, suspension, or revocation — Grounds.
- 17-89-310. Complaints — Hearings.

Effective Dates. Acts 1981, No. 589, § 25: became law without Governor’s signature, Mar. 19, 1981. Emergency clause provided: “It is hereby found and determined by the Seventy-Third General Assembly that the public has been harmed because there is presently no adequate law or regulation protecting the public from those persons who are untrained and

unqualified and are in the business of dispensing ophthalmic materials. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after passage and approval.”

17-89-301. License or registration required.

Except as otherwise provided in this chapter, any person not licensed to practice medicine or optometry in Arkansas who shall perform or purport to perform any act described in § 17-89-102(4) must be licensed or registered by the Arkansas Board of Dispensing Opticians as provided in this chapter.

History. Acts 1981, No. 589, § 3; A.S.A. 1947, § 72-2103.

17-89-302. Qualifications — Licensed dispensing opticians.

(a) Every applicant for examination as a licensed dispensing optician shall present satisfactory evidence to the Arkansas Board of Dispensing Opticians that he or she is over twenty-one (21) years of age, of good moral character, a high school graduate or the equivalent thereof, and either:

(1) Is a graduate of a school of opticianry whose curriculum consists of at least eighteen (18) months of didactic and practical instruction which is accredited by a national accreditation organization and approved by the board; or

(2)(A) Has been engaged in the providing of ophthalmic dispensing services, as defined in this chapter, in the State of Arkansas for a period of not less than five (5) years immediately prior to application.

(B) No more than three (3) years may consist of:

(i) Working in a qualified service optical laboratory approved by the board; or

(ii) Providing ophthalmic dispensing services under the direct supervision of an Arkansas-licensed or registered dispensing optician, Arkansas-licensed optometrist, or Arkansas physician skilled in diseases of the eye.

(b) All persons making application for licensure as licensed dispensing opticians must successfully complete the written and practical examination prepared and conducted by the board.

History. Acts 1981, No. 589, § 7; A.S.A. 1947, § 72-2107; Acts 1987, No. 966, § 1; 1993, No. 1219, § 17.

17-89-303. Qualifications — Registered dispensing opticians.

Every applicant for examination as a registered dispensing optician shall present satisfactory evidence to the Arkansas Board of Dispensing Opticians that he or she is over twenty-one (21) years of age, of good moral character, a high school graduate or the equivalent thereof, and either:

(1) Has a minimum of three (3) years' dispensing experience in Arkansas under the direct supervision of an Arkansas-licensed optometrist or Arkansas-licensed physician skilled in disease of the eye;

(2) Has a minimum of three (3) years' experience under the direct supervision of a licensed or registered dispensing optician holding a certificate of licensure or registry in the State of Arkansas, one (1) year of which may be while working in a qualified full-service optical laboratory approved by the board; or

(3) Is a graduate of an approved school of opticianry which has been accredited by a national accreditation organization and is recognized by the board.

History. Acts 1981, No. 589, § 7; A.S.A. 1947, § 72-2107; Acts 1993, No. 1219, § 18.

17-89-304. Examinations.

(a) No person other than a licensed optometrist or licensed physician skilled in diseases of the eye or a person licensed or registered by the Arkansas Board of Dispensing Opticians as approved in this chapter shall provide ophthalmic dispensing services to the public until after he or she has passed the written and practical examination conducted by the board and shown proficiency in those subjects and procedures designated by the board, including, but not limited to:

- (1) Mechanical optics;
- (2) Occupational vision requirements;
- (3) Taking facial measurements for proper frame sizing;
- (4) Ophthalmic lens types; and
- (5) Fitting and adjusting glasses and frames to the face.

(b) A person eligible for licensure or registry under this chapter and desirous of licensure or registry shall make application for examination to the board at least sixty (60) days prior to the date of examination upon a form and in such a manner as the board shall prescribe. The application shall be accompanied by the fee prescribed in subsection (f) of this section.

(c) Each applicant for licensure or registry under this chapter shall be examined by the board by written and practical examination and shall be required to meet certain standards of performance established by rules adopted by the board.

(d)(1) Applicants for licensure or registry shall be examined at a time and place and under such supervision as the board may determine.

(2) Examinations shall be given at least one (1) time each year at such places within this state as the board may determine.

(3) The board shall give reasonable public notice of the examinations in accordance with its adopted rules at least ninety (90) days prior to the administration of the examination.

(4) The board shall notify by mail all individual examination applicants of the time and place of the examination.

(e) Every applicant successfully passing the examination of the board and satisfying the qualifications required by this chapter shall receive from the board a certificate of licensure or a certificate of

registry to provide ophthalmic dispensing services to the public as a registered or licensed dispensing optician in this state.

(f) Any person making application for examination for licensure or registry as a dispensing optician shall be required to pay to the Secretary-treasurer of the Arkansas Board of Dispensing Opticians a fee established by the board.

History. Acts 1981, No. 589, §§ 7, 8, 11; 72-2111; Acts 1987, No. 966, § 2; 1993, A.S.A. 1947, §§ 72-2107, 72-2108, No. 1087, § 2.

17-89-305. Reciprocity.

(a) Any person who desires to provide ophthalmic dispensing services to the public as a licensed or registered dispensing optician in this state and who holds a current validated certificate of licensure or registry as a dispensing optician in a state whose requirements for licensure or registry are in the opinion of the Arkansas Board of Dispensing Opticians at least equivalent to those of this state may at the discretion of the board be issued a certificate of licensure or a certificate of registry.

(b) The certificate may be issued without a written or practical examination upon payment of the fee prescribed in § 17-89-304(f) to the Secretary-treasurer of the Arkansas Board of Dispensing Opticians and upon satisfactory proof that the applicant:

(1) Is qualified under the provisions of this chapter;

(2) Is of good moral character;

(3) Has provided ophthalmic dispensing services to the public as a dispensing optician in the state of licensure or registration for a period of at least five (5) years for licensure or three (3) years for registration immediately prior to his or her application for reciprocity to this state; and

(4) Is licensed or registered in a state which grants like reciprocal privileges to opticians who hold certificates of licensure or registry issued by this state.

History. Acts 1981, No. 589, § 10; A.S.A. 1947, § 72-2110; Acts 1993, No. 1219, § 19.

17-89-306. Dispensers from nonlicensing states.

(a) Any person from a nonlicensing state who desires to provide ophthalmic dispensing services to the public as a licensed or registered dispensing optician in this state, and who submits satisfactory evidence to the Arkansas Board of Dispensing Opticians that he or she meets the following requirements, shall be eligible for licensure or registry by the board.

(b) The applicant must:

(1) Be qualified under the provisions of this chapter;

(2) Be of good moral character;

(3) Have been engaged in ophthalmic dispensing as described in § 17-89-102(4) for a period of:

(A) Five (5) years for applicants for licensure, of which no more than three (3) years may be while working in a qualified full-service optical laboratory approved by the board; or

(B) Three (3) years for applicants for registry, of which no more than one (1) year may be while working in a qualified full-service laboratory approved by the board immediately prior to the date of application;

(4) Successfully complete the written and practical examination for licensure or registry prepared and conducted by the board; and

(5) Have paid the fee prescribed in § 17-89-304(f) to the Secretary-treasurer of the Arkansas Board of Dispensing Opticians.

History. Acts 1981, No. 589, § 10;
A.S.A. 1947, § 72-2110; Acts 1993, No.
1219, § 20.

17-89-307. Certificates — Renewal.

(a) All licensed and registered opticians shall pay by July 1 of each year a fee established by the Arkansas Board of Dispensing Opticians to the Secretary-treasurer of the Arkansas Board of Dispensing Opticians as a renewal licensure or registry fee.

(b)(1) Unless the fee is paid, certificates of licensure or registry issued under this chapter shall expire and become invalid at 12:00 midnight on July 1 of that year.

(2) Upon the payment of the renewal fee and in the absence of a board finding against renewal under this chapter, the person shall have his or her certificate of licensure or registry renewed for an additional year commencing on July 1 of that year.

(3) Any person licensed or registered under the provisions of this chapter who has not paid his or her renewal fee in full by July 1 of that year shall be required to pay a renewal penalty established by the board.

History. Acts 1981, No. 589, § 13;
A.S.A. 1947, § 72-2113; Acts 1987, No.
966, § 3; 1993, No. 1087, § 3.

17-89-308. Continuing education program.

(a) The Arkansas Board of Dispensing Opticians may institute a program for continuing education for its licensees.

(b) The board may require proof of successful completion of its continuing education requirements as a condition for renewal of license, except that the board shall not require more than nine (9) clock hours of continuing education within any two-year period.

(c) Only courses approved by the board shall be acceptable for satisfying the continuing education requirements.

(d) The board shall promulgate regulations to implement this section.

History. Acts 1985, No. 962, § 1; A.S.A. 1947, § 72-2129.

17-89-309. Denial, suspension, or revocation — Grounds.

(a) The Arkansas Board of Dispensing Opticians shall revoke or suspend or refuse to issue or renew a license or registration of any dispensing optician for any violation of any provision of this chapter or of any rules and regulations promulgated by the board, including, but not limited to, the following:

(1) The applicant, licensee, or registrant obtaining a license or registration by means of fraud, misrepresentation, or concealment of material facts;

(2) The applicant, licensee, or registrant engaging in conduct, including, but not limited to, engaging in the advertising practice commonly known as “bait and switch”, or establishing an ophthalmic dispensing business immediately adjacent to the office of a licensed optometrist or physician skilled in diseases of the eye in what is commonly known as a “side-by-side” operation, or engaging in the referral procedure commonly known as “capping and steering”;

(3) The applicant, licensee, or registrant being convicted of a felony in any state or federal court, and not pardoned, if the acts for which the person is convicted are found by the board to have a direct bearing on whether he or she should be entrusted to serve the public in the capacity of a dispensing optician;

(4) The applicant, licensee, or registrant violating any prohibitive provision under this chapter;

(5) The applicant, licensee, or registrant engaging in any fraudulent, misleading, or deceptive advertising;

(6) The applicant, licensee, or registrant failing to qualify for the license or registration;

(7) The applicant, licensee, or registrant violating any other rule or regulation promulgated by the board; or

(8) The applicant, licensee, or registrant using any narcotic drug or alcohol which impairs his or her ability to perform the work of an ophthalmic dispenser.

(b) If after due notice and hearing a person licensed or registered as an optician or apprentice under this chapter is found to have violated this chapter, the board may impose any one (1) or more of the following sanctions:

(1) Suspension, revocation, or denial of the license or registration or the renewal thereof;

(2) A penalty not to exceed one thousand dollars (\$1,000) for each violation;

(3) Place conditions or restrictions upon the person’s license, registration, or practice; or

(4) Such other requirements or penalties as may be appropriate to the circumstances or the case, and which would achieve the desired disciplinary purposes, but which would not impair the public welfare and morals.

(c) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the board shall have the power to file suit in the Pulaski County Circuit Court to obtain the judgment for the amount of the penalty not paid.

History. Acts 1981, No. 589, § 17; A.S.A. 1947, § 72-2117; Acts 1999, No. 524, § 4.

17-89-310. Complaints — Hearings.

(a)(1) Any person may file a complaint with the Arkansas Board of Dispensing Opticians against any person providing ophthalmic dispensing services to the public or having a certificate of licensure or registry to practice ophthalmic dispensing in this state charging the person with having violated the provisions of this chapter.

(2) The complaint shall set forth specific charges in sufficient detail so as to disclose to the accused person fully and completely the alleged acts of misconduct for which he or she is charged.

(3) When the complaint is filed with the board, the Secretary-treasurer of the Arkansas Board of Dispensing Opticians shall mail a copy to the accused person by registered mail at his or her last address of record with a written notice of the time and place of hearing advising him or her that he or she may be present in person and with counsel, if he or she so desires, to offer evidence and be heard in his or her defense.

(b)(1) At the time and place fixed for hearing before the board, the board shall receive evidence upon the complaint under consideration and shall accord the person against whom charges have been made a full and fair opportunity to be heard in his or her defense.

(2) The board shall not be bound by strict or technical rules of evidence but shall consider all evidence fully and fairly, provided that all oral testimony by the board must be taken under oath.

(3) All hearings shall be conducted in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) All evidence considered by the board shall be construed so as not to deprive any person of his or her rights without a full, fair, and impartial hearing.

(5) The board may administer oaths and issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, papers, or documents pertinent to any matters coming before the board.

History. Acts 1981, No. 589, § 18; A.S.A. 1947, § 72-2118; Acts 1999, No. 524, § 5.

SUBCHAPTER 4 — REGULATION OF PRACTICE

SECTION.
17-89-401. Employment of apprentice dispensing opticians.
17-89-402. Written prescription required.
17-89-403. Standards for materials.
17-89-404. Branch offices.
17-89-405. Fraudulent, misleading, or deceptive advertising prohibited.

SECTION.
17-89-406. Disclaimer in advertisements required.
17-89-407. Penalties — Enforcement.
17-89-408. Office permit.

Effective Dates. Acts 1981, No. 589, § 25: became law without Governor's signature, Mar. 19, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly that the public has been harmed because there is presently no adequate law or regulation protecting the public from those persons who are untrained and unqualified and are in the business of dispensing ophthalmic materials. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after passage and approval."

Acts 1985, No. 418, § 7: became law without Governor's signature, Mar. 20, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the establishment of reasonable procedures for regulation of truth in advertising by ophthalmic dispensers in Arkansas is essential to the enforcement of Acts 1981, No. 589 and that the immediate passage of this act is necessary to accomplish said purpose and to protect the public peace, health and safety. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

17-89-401. Employment of apprentice dispensing opticians.

(a)(1) Licensed or registered opticians under this chapter may utilize apprentice dispensing opticians to engage in ophthalmic dispensing as defined in this chapter under their direct personal physical supervision and at the same location where the licensed or registered person dispenses.

(2) However, no licensed or registered dispensing optician shall supervise more than three (3) apprentices at a given time.

(b) Apprentices may be employed upon submission of an application for registration as an apprentice dispensing optician to the Arkansas Board of Dispensing Opticians and approval by the board and payment of a fee to the board in an amount to be determined by the board.

History. Acts 1981, No. 589, § 14; A.S.A. 1947, § 72-2114; Acts 1995, No. 999, § 1.

17-89-402. Written prescription required.

(a) It shall be unlawful for any dispensing optician or person engaged in the business of manufacturing, selling, or dispensing regular or safety ophthalmic materials to fill or duplicate an ophthalmic prescription without having a written prescription signed by the licensed optometrist or licensed physician skilled in disease of the eye who conducted the examination from which the prescription was prepared.

(b) It shall also be unlawful for him or her to fail to comply with the written instructions when the instructions are included on a written prescription signed by a licensed optometrist or licensed physician skilled in disease of the eye.

(c) No change or alteration from the prescription of the prescribing optometrist or physician shall be made, except that changes may be made in tint or material of the lenses unless the changes are specifically prohibited on the written prescription.

(d) It is the specific intent of the General Assembly that this section supplement, not repeal, existing laws of Arkansas.

History. Acts 1981, No. 589, § 15;
A.S.A. 1947, § 72-2115.

17-89-403. Standards for materials.

All ophthalmic materials, including eyeglasses, spectacles, lenses, or other optical devices or materials or parts thereof, sold in the State of Arkansas must conform to standards of quality as promulgated by the American National Standards Institute, commonly known as Z-80.1 standards, or any standards later set forth in a regulation promulgated by the Arkansas Board of Dispensing Opticians.

History. Acts 1981, No. 589, § 22;
A.S.A. 1947, § 72-2122.

17-89-404. Branch offices.

(a) No licensed or registered dispensing optician or other person in this state shall establish more than two (2) ophthalmic dispensing branch offices in addition to his or her principal office unless he or she shall have first secured a branch office permit from the Arkansas Board of Dispensing Opticians.

(b)(1) With board approval, the board shall promulgate rules and regulations establishing the branch office permit and the procedures for issuing, suspending, or revoking the branch office permit.

(2) The rules and regulations shall comply with the pertinent provisions of all existing state law.

(c) All businesses providing retail ophthalmic dispensing services, as defined in § 17-89-102(4), to the public must have physically present a licensed or registered dispensing optician within the place of business at the time the services are provided.

(d) Each optical dispensary in the State of Arkansas whose title does not contain the proper name of an Arkansas optometrist or Arkansas physician skilled in diseases of the eye or a licensed or registered dispensing optician holding a certificate of licensure or registry in the State of Arkansas must file a certificate of ownership each year with the board between June 1 and June 30. Each certificate of ownership must give the name and address of the dispensary, the optometrist or physician skilled in diseases of the eye, or licensed or registered dispensing optician or person who owns or maintains legal responsibility of the dispensary.

History. Acts 1981, No. 589, § 16;
A.S.A. 1947, § 72-2116; Acts 1987, No.
966, § 4.

17-89-405. Fraudulent, misleading, or deceptive advertising prohibited.

It shall be unlawful for any dispensing optician or any person engaged in ophthalmic dispensing in this state, or anyone on their behalf, to knowingly or willfully engage in any fraudulent, misleading, or deceptive advertising. Any of the following practices shall be deemed to be fraudulent, misleading, or deceptive advertising:

(1) The use in any advertisement, whether by newspaper, magazine, circular, sign, billboard, radio, television, or any other printed, oral, or visual form of advertising, of a picture, drawing, or other illustration or format which conveys the impression or belief that the ophthalmic dispenser or dispensing optician firm provides eye examinations or is qualified to give complete eye care service, which may include eye examinations and the issuance of prescriptions for spectacles;

(2)(A) The use of words or a format designed to convey or which result in conveying an impression that the ophthalmic dispensing firm or the dispensing optician is qualified to provide eye care service other than the services that are authorized by the laws of this state and regulations promulgated pursuant thereto for ophthalmic dispensing in this state.

(B) For the purposes of this subsection, the use of the words "eye care", "professional eye care", or the use of such words as "providing experienced professionals trained to meet your eye care needs" and similar words or expressions in the advertisement shall be interpreted as being fraudulent, misleading, and deceptive, since these terms are normally accepted and understood to represent services that can be performed only by a licensed optometrist or a licensed physician;

(3) Failure to include in the advertisement the disclaimer provision required in § 17-89-406(a); and

(4) The use of any other advertising method which conveys a misleading or deceptive interpretation of the services that may be provided by a dispensing optician or by an ophthalmic dispensing firm in this state, within the limitations provided by law.

History. Acts 1985, No. 418, § 2; A.S.A. 1947, § 72-2125.

17-89-406. Disclaimer in advertisements required.

(a) Any advertisement made by, for, or in behalf of any ophthalmic dispensing firm or any dispensing optician in this state, by newspaper, magazine, handbill, circular, radio, television, billboard, sign, or other means or forms of advertisement, except goodwill advertising as determined by the State Board of Optometry, shall cause to have printed thereon, or stated in oral advertisements, the following disclaimer:

“This firm is not licensed to make eye examinations.”

(b)(1) In any printed advertisement, the disclaimer shall be printed in the same style, arrangement, and overall appearance of other printed material appearing within the advertisement, giving similar prominence to the disclaimer in the same size of type, style, arrangement, and overall appearance used in a majority of the written material in the advertisement.

(2) In oral advertisements, the disclaimer shall be depicted in a vocal presentation of the same volume, quality, and style as other portions of the oral advertisement are presented.

History. Acts 1985, No. 418, § 3; A.S.A. 1947, § 72-2126.

17-89-407. Penalties — Enforcement.

(a)(1) Any person violating the provisions of §§ 17-89-405 and 17-89-406 shall be guilty of a Class A misdemeanor and upon conviction shall be subject to the fines and penalties provided by law.

(2) Each advertisement in violation of §§ 17-89-405 and 17-89-406 shall be a separate offense, and each day on which an advertisement in violation of §§ 17-89-405 and 17-89-406 is made shall constitute a separate offense.

(b)(1) The State Board of Optometry shall have the power to institute suit in the circuit court of the county in which a violation of §§ 17-89-405 and 17-89-406 is alleged to have occurred to require enforcement by injunctive procedures and to recover costs of court and reasonable attorney's fees.

(2) The board shall not be required to execute or give a bond for cost, indemnity, or stay as a condition to the issuance of a restraining order or injunction, either temporary or permanent, in any court of this state.

History. Acts 1985, No. 418, §§ 4, 5; A.S.A. 1947, §§ 72-2127, 72-2128.

Cross References. Class “A” misdemeanors, §§ 5-4-201, 5-4-401.

17-89-408. Office permit.

(a)(1) It shall be unlawful for any person or legal entity to conduct an office or place of business in this state where ophthalmic dispensing services are offered or performed unless that person or entity shall have first secured an office permit from the Arkansas Board of Dispensing Opticians pursuant to board regulation for each such office or place of business.

(2) However, persons or entities identified in § 17-89-103 are exempt from this section.

(3) The office permit shall be prominently displayed in each office or place of business in this state where ophthalmic dispensing services are offered or performed.

(b) The office permit shall be renewed on or before July 1 of each year at a cost and pursuant to procedures to be determined by board rule or regulation.

(c) The board shall suspend, revoke, or refuse to issue or renew an office permit for any violation of any provision of this chapter or of any rules and regulations promulgated by the board, including at least the following:

(1) The applicant, person, or legal entity obtains an office permit by means of fraud, misrepresentation, or concealment of material facts;

(2) The applicant, person, or legal entity violates any prohibitive provision under this chapter;

(3) The applicant, person, or legal entity engages in any fraudulent, misleading, or deceptive advertising;

(4) The applicant, person, or legal entity fails to qualify for the office permit; or

(5) The applicant, person, or legal entity violates any other rule or regulation promulgated by the board.

(d) After due notice and a hearing regarding a violation of this section, the board may impose any one (1) of the following sanctions:

(1) Suspension, revocation, or denial of the office permit renewal thereof;

(2) A penalty not to exceed one thousand dollars (\$1,000) for each violation;

(3) Such other requirements or penalties as may be appropriate to the circumstance or the case and which would achieve the desired disciplinary purpose but which would not impair the public welfare and morals.

(e) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the board shall have the power to file suit in the Pulaski County Circuit Court to obtain the judgment for the amount of the penalty not paid.

History. Acts 1999, No. 524, § 6.

CHAPTER 90

OPTOMETRISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE BOARD OF OPTOMETRY.
3. LICENSING.
4. OPTOMETRIC DRUGS.
5. IMPAIRED OPTOMETRIST TREATMENT PROGRAM.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-89-101 et seq.

RESEARCH REFERENCES

ALR. Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Improper or immoral sexually related conduct toward patient as grounds for disciplinary action against physician, dentist, or other licensed healer. 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

When limitations period begins to run on claim for optometrists malpractice. 70 A.L.R.4th 600.

Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner. 72 A.L.R.4th 1148.

Necessity of expert evidence in preceeding for revocation of license of physician, surgeon or dentist. 74 A.L.R.4th 969.

What constitutes practice of optometry? 82 A.L.R.4th 816.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.

Medical malpractice: Who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice. 12 A.L.R.5th 1.

False or fraudulent statements or non-disclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner. 32 A.L.R.5th 57.

Allowance of punitive damages in medical malpractice actions. 35 A.L.R.5th 145.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., § 8 and § 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

CASE NOTES

Constitutionality.

This chapter is constitutional. *Duren v. Arkansas State Bd. of Optometry*, 211 Ark. 565, 201 S.W.2d 578 (1947).

This chapter is not violative of constitutional guarantees of equal protection of the law. *Melton v. Carter*, 204 Ark. 595, 164 S.W.2d 453 (1942).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-90-101. Definition — Applicability.

SECTION.

17-90-102. Exemptions.

SECTION.

- 17-90-103. Status of profession.
- 17-90-104. Unlawful practice.
- 17-90-105. Penalty — Injunction.
- 17-90-106. Service of process on nonresident practitioner.
- 17-90-107. Subpoenas.

SECTION.

- 17-90-108. Requirement to provide eyeglass prescription.
- 17-90-109. Regulation of contact lenses.
- 17-90-110. Limitation on liability.
- 17-90-111. Loans to optometry students.

Cross References. Ophthalmic dispensing regulations, § 17-89-101 et seq.

Effective Dates. Acts 1941, No. 94, § 18: became law without Governor's signature, Feb. 25, 1941. Emergency clause provided: "The Legislature hereby finds that the public has been injured through the activities of certain persons, firms and corporations not licensed to practice optometry, and an emergency is hereby declared to exist, and in order to protect the public peace, health and safety this act shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 102, § 9: Feb. 26, 1957. Emergency clause provided: "The Legislature hereby finds that the public has been injured through the activities of certain persons, firms and corporations not licensed to practice optometry, and an emergency is hereby declared to exist, and in order to protect the public peace, health and safety this act shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 710, § 5: Apr. 2, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly of the State of Arkansas that the provisions of this act are necessary for the orderly conduct of the practice of optometry and the necessary eye care of the people of Arkansas and to insure the continued and immediate eye care of the people. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 836, § 3: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law requires that the Arkansas State Committee on Optometric Drugs meet at least quarterly; that the business of the committee may some-

times justify quarterly meetings but that this should be left to the chairman and should not be mandated by law; and that this act is designed to provide that the committee shall meet at the call of the chairman or a majority of the committee, but at least annually, and should, in the interest of efficiency and economy, be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 101, § 7: emergency failed to pass. Approved Mar. 3, 1987. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds that it is essential to the protection of residents of the State that qualified optometrists be authorized to practice at their highest level of competence which includes but is not limited to the possessing, administering and prescribing of those drugs that are useful and necessary to the practice of the profession and that this Act is designed to accomplish this purpose and should be given effect at the earliest practical date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, Nos. 176 and 186, § 8: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the public health and welfare of the citizens of the state of Arkansas will be benefited by allowing Doctors of Optometry to provide all practices, procedures, and services which the Arkansas State Board of Optometry determines they are qualified to provide; that the current law does not allow Doctors of Optometry to provide such practices, pro-

cedures, and services; and that this act so permits. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither

approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-90-101. Definition — Applicability.

(a)(1) The "practice of optometry" means the examination, diagnosis, treatment, and management of conditions of the human eye, lid, adnexa, and visual system, including the removal of foreign bodies from the cornea, conjunctiva, lid, or adnexa but shall exclude other surgery of the lid, adnexa, or visual system which requires anything other than a topical anesthetic.

(2) "Optometry" shall include utilizing any method or means which the licensed optometrist is educationally qualified to provide, as established and determined by the State Board of Optometry. In administering this chapter, the board shall by rule or regulation prescribe those acts, services, procedures, and practices which constitute both primary optometric eye care and the practice of optometry.

(3) The "practice of optometry" shall include, but not be limited to, the prescribing and sale of eyeglasses and contact lenses, the prescribing and administering of all oral and topical drugs for the diagnosis or treatment only of conditions of the eye, lids, and adnexa except those listed in Schedules I and II of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, and the prescribing and administering of epinephrine, benadryl, or other comparable medication for the emergency treatment of anaphylaxis or anaphylactic reactions. All licensed optometrists are prohibited from using ophthalmic lasers for surgical procedures, from performing cataract surgery, from performing radial keratotomy surgery, and from selling prescription drugs.

(b) Any person who utilizes any objective or subjective method, including, but not limited to, self-testing devices and computerized or automated refracting devices for the purpose of preparing an optical prescription, to analyze or determine any optical defect, deficiency, deformity, or visual or muscular anomaly of the visual system, who measures the curvature of the human cornea, who prescribes, tints, coats, dispenses, adapts, or duplicates lenses, prisms, ocular exercises, visual therapy, or orthoptics for the correction, relief, or aid of the visual functions, who prescribes, adapts, fits, duplicates, dispenses, modifies, sells, or supplies contact lenses, or who holds himself or herself out as being able to do so, shall be deemed to be engaged in the practice of optometry.

(c) Those licensed optometrists who meet the qualifications and standards established by the board shall be designated "optometric physicians".

(d) Nothing in this chapter shall apply to physicians and surgeons as defined in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(e) Nothing in this chapter shall prevent the performance of those acts, practices, and procedures, including the ordering, application, and sale of tints or coats for spectacle lenses, by legally qualified persons who are specifically authorized and approved by the Ophthalmic Dispensing Act, § 17-89-101 et seq.

(f)(1) Every licensed optometrist shall within ten (10) days of receipt of written notification of the filing of a claim or lawsuit alleging malpractice against him or her notify the board by registered letter of the lawsuit and provide information or reports as required by the board.

(2) All information and reports shall be exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., and shall be released only upon the order of a court of competent jurisdiction.

History. Acts 1941, No. 94, § 1; 1979, 101, §§ 1, 2; 1993, No. 176, § 1; 1997, No. No. 710, §§ 1, 3; 1981, No. 836, § 1; A.S.A. 176, § 1; 1997, No. 186, § 1. 1947, §§ 72-801, 72-801.1; Acts 1987, No.

CASE NOTES

Practice of Optometry.

Owner and employees of optical shop improperly engaged in practice of optometry where employees of shop adjusted glasses to face of customer and employees and owner of shop were not licensed physicians or optometrists. *Dellinger v. Arkansas State Bd. of Optometry*, 214 Ark. 562, 217 S.W.2d 338 (1949).

Display of frames, checking facial measurements, grinding lenses in accordance with prescription of oculist, and fixing frame to face did not constitute “dispensing and adapting of glasses” and “lenses” within meaning of this section. *Arkansas State Bd. of Optometry v. Keller*, 218 Ark. 820, 239 S.W.2d 14 (1951).

17-90-102. Exemptions.

Nothing in this chapter, except as expressly provided otherwise, shall apply to physicians and surgeons nor to persons who sell eyeglasses, spectacles, lenses, contact lenses, frames, mountings, or prisms at wholesale on individual prescriptions to optometrists, physicians, and surgeons, nor shall it prohibit the sale of ready-made eyeglasses and spectacles when sold as merchandise at any established place of business where no attempt is made to practice optometry.

History. Acts 1941, No. 94, § 16; 1957, No. 102, § 7; A.S.A. 1947, § 72-819.

CASE NOTES

Constitutionality.

Alleged invalidity of exemption of wholesalers would not help owner of retail shop, as exemption was severable from other provisions of chapter. *Dellinger v.*

Arkansas State Bd. of Optometry, 214 Ark. 562, 217 S.W.2d 338 (1949).

Exemption of wholesalers who sell glasses from operation of chapter was not arbitrary or unreasonable. *Dellinger v.*

Arkansas State Bd. of Optometry, 214 Ark. 562, 217 S.W.2d 338 (1949).

17-90-103. Status of profession.

The practice of optometry is declared to be a learned profession, and the same rights, powers, and duties are declared to attach thereto as attach to other learned professions.

History. Acts 1941, No. 94, § 1; A.S.A. 1947, § 72-801; Acts 1987, No. 101, § 1.

CASE NOTES

ANALYSIS

Constitutionality.
In General.

Constitutionality.

The General Assembly had power to declare optometry a learned profession; such determination, being an expression of public policy, is not in excess of legisla-

tive powers. *Melton v. Carter*, 204 Ark. 595, 164 S.W.2d 453 (1942).

In General.

Optometry should be classified as a skilled profession or as a limited statutory profession. *State ex rel. Attorney Gen. v. Gus Blass Co.*, 193 Ark. 1159, 105 S.W.2d 853 (1937) (decision under prior law).

17-90-104. Unlawful practice.

The following acts are declared to be unlawful:

- (1) The violation of any of the provisions of this chapter;
- (2) For any optometrist, physician, or surgeon to advertise in any manner, either directly or indirectly, any fraudulent, false, or misleading statement as to the skill or method of practicing of himself or herself or of any other optometrist, physician, or surgeon, to advertise in any manner that will tend to deceive, mislead, or defraud the public, or to advertise in any other manner;
- (3) For any person, firm, partnership, or corporation or any optometrist, physician, or surgeon to advertise, either directly or indirectly, free optometric service or examination or to advertise directly or indirectly by any means whatsoever any definite or indefinite amount or terms as a fee for the professional services or materials rendered or furnished by an optometrist, physician, or surgeon;
- (4) For any person, firm, corporation, or partnership not having a license to engage in the practice of optometry;
- (5) For any person, firm, partnership, or corporation to employ any optometrist, physician, or surgeon to assist it in the unlawful practice of optometry. However, a licensed optometrist or partnership composed of licensed optometrists may employ other licensed optometrists in practicing optometry;
- (6) For an optometrist, physician, or surgeon to accept employment from any unlicensed person, firm, partnership, or corporation or in any other manner to assist it or them in the unlawful practice of optometry;

(7) For any person, firm, partnership, or corporation to give or offer to give eyeglasses, spectacles, lenses, or frames to any person as a premium or inducement for the purchase of any goods, wares, or merchandise;

(8) For any person to impersonate a registered optometrist or a registered physician or surgeon or to buy, sell, or fraudulently obtain a certificate of registration;

(9) For any unlicensed person, partnership, firm, or corporation to publicly represent that he or she or it by himself or herself or itself or through agents or employees is engaging in the practice of optometry or is qualified to do so; and

(10) For any optometrist, physician, surgeon, individual, firm, partnership, corporation, wholesaler, jobber, or retailer to:

(A) Solicit the sale of spectacles, eyeglasses, lenses, contact lenses, frames, mountings, prisms, or any other optical appliances or devices, eye examinations, or visual services, including vision training or orthoptics, by radio, window display, television, telephone directory display advertisement, newspaper advertisement, handbills, circulars, prospectuses, posters, motion pictures, stereopticon slides, or any other printed publication or medium or by other means of advertisement; or

(B) Use any method or means of baiting, persuading, or enticing the public into buying spectacles, eyeglasses, lenses, contact lenses, frames, mountings, prisms, or other optical appliances or devices for visual correction or relief of the visual system or to train the visual system.

History. Acts 1941, No. 94, § 12; 1957, No. 102, § 5; A.S.A. 1947, § 72-815.

RESEARCH REFERENCES

Ark. L. Rev. FTC Knights and Consumer Daze: The Regulation of Deceptive Unfair Advertising, Hammer, 32 Ark. L. Rev. 446.

CASE NOTES

ANALYSIS

Employment of Optometrists.
Injunction.
Recommendation of Physician.

Employment of Optometrists.

Contract between department store and individual who employed optometrist and conducted optical department in the store did not create relationship of joint venturers so as to render optometrist an employee of the department store. State ex rel. Attorney Gen. v. Gus Blass Co., 193

Ark. 1159, 105 S.W.2d 853 (1937) (decision under prior law).

A layman may not engage in the profession of optometry by employing a licensed optometrist. Ritholz v. Arkansas State Bd. of Optometry, 206 Ark. 671, 177 S.W.2d 410 (1944).

Injunction.

A suit by the board to enjoin a partnership from practicing optometry was not one to enjoin the commission of a crime but was to prevent the illegal practice of optometry. Ritholz v. Arkansas State Bd.

of Optometry, 206 Ark. 671, 177 S.W.2d 410 (1944).

Recommendation of Physician.

Chapter does not prohibit an optician from recommending a particular physician. Dellinger v. Arkansas State Bd. of

Optometry, 214 Ark. 562, 217 S.W.2d 338 (1949).

Cited: Duren v. Arkansas State Bd. of Optometry, 211 Ark. 565, 201 S.W.2d 578 (1947).

17-90-105. Penalty — Injunction.

(a)(1) Any optometrist, physician, or surgeon or individual, firm, or corporation violating any of the provisions of this chapter shall be guilty of a violation and upon conviction shall be fined in any sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

(2) Each day the violation continues shall constitute a separate offense and be punishable as such.

(b)(1) The violation of any provision of this chapter may be enjoined by the State Board of Optometry in the circuit courts of this state even though the violation may be punishable by fine, the intention of this chapter being to provide a speedy means of protecting the public which has not heretofore existed.

(2) The board shall not be required to execute or give a bond for cost, indemnity, or stay as a condition to the issuance of a restraining order or injunction, either temporary or permanent, in any court of this state.

History. Acts 1941, No. 94, §§ 13, 15; 1957, No. 102, § 6; A.S.A. 1947, §§ 72-816, 72-818; Acts 2005, No. 1994, § 87.

CASE NOTES

ANALYSIS

Injunctions.
Jurisdiction.

Injunctions.

Suit to enjoin partnership from practicing optometry is not one to enjoin commission of a crime. Its purpose is to prevent illegal practice of optometry rather than to penalize the practitioner. Ritholz v. Arkansas State Bd. of Optometry, 206 Ark. 671, 177 S.W.2d 410 (1944).

Evidence sufficient to support decree granting injunction. Ritholz v. Arkansas State Bd. of Optometry, 206 Ark. 671, 177 S.W.2d 410 (1944); Duren v. Arkansas State Bd. of Optometry, 211 Ark. 565, 201 S.W.2d 578 (1947).

Where evidence showed that optical shop was violating provisions of this chapter, board was entitled to a decree prohibiting shop from prescribing, dispensing, adapting, or duplicating lenses but was

not entitled to a decree prohibiting acceptance of deposits from customers and from recommending a physician where there was no evidence of an illegal relationship between shop and the physician. Dellinger v. Arkansas State Bd. of Optometry, 214 Ark. 562, 217 S.W.2d 338 (1949).

Jurisdiction.

Chancery court had jurisdiction of the subject-matter of litigation seeking to enjoin operation of a department of optometry in a department store. Gainsburg v. Dodge, 193 Ark. 473, 101 S.W.2d 178 (1937) (decision under prior law).

Where defendant was a nonresident constructively served, court was without jurisdiction to grant restraint affecting his right to contract or the right to use his property. Gainsburg v. Dodge, 193 Ark. 473, 101 S.W.2d 178 (1937) (decision under prior law).

If action to enjoin practice of optometry was intended to penalize the practitioner, chancery would be without jurisdiction.

Ritholz v. Arkansas State Bd. of Optometry, 206 Ark. 671, 177 S.W.2d 410 (1944).

Cited: Miller v. Reed, 234 Ark. 850, 355 S.W.2d 169 (1962).

17-90-106. Service of process on nonresident practitioner.

(a)(1) The performance by a nonresident person, firm, or corporation within this state of any act prohibited or authorized by the terms of this chapter which constitutes the practice of optometry as defined by this chapter, except when done by persons, firms, or corporations having a designated agent for service of process within this state, shall be deemed equivalent to the appointment by the nonresident of the Secretary of State or his or her successor in office to be the true and lawful attorney and agent of the nonresident.

(2) All lawful process in any action or proceedings against him or her or against any person, firm, or corporation growing out of any action done within this state which may be authorized or prohibited under this chapter may be served upon him or her.

(3) The performance of the act shall be an agreement by the person, firm, or corporation that any such process against the person, firm, or corporation which is so served shall be of the same legal force and validity as if served on the person, firm, or corporation personally.

(b)(1) Service of process shall be made by serving a copy of the process on the Secretary of State, and the service shall be sufficiently served upon the nonresident.

(2) Notice of the service and a copy of the process must be forthwith sent by registered mail by the plaintiff or his or her attorney to the defendant at his or her last known address.

(3) The defendant's return receipt or the affidavit of the plaintiff or his or her attorney of compliance therewith must be appended to the writ of process and entered and filed in the office of the circuit court wherein the cause is brought.

(c) The court in which the action is pending may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action.

(d) Service of summons when obtained upon a nonresident person, firm, or corporation as provided in this section, shall be deemed sufficient service of summons and process to give to any of the courts of this state jurisdiction over the cause of action and over the nonresident defendant and shall warrant and authorize personal judgment against the nonresident person, firm, or corporation in the event that the plaintiff prevails in the action.

History. Acts 1941, No. 94, § 14; A.S.A. 1947, § 72-817.

CASE NOTES

Service on Employee.

Service of summons upon manager of partners' store gave the trial court jurisdiction of persons of the partners even

though they were not physically present. *Ritholz v. Dodge*, 210 Ark. 404, 196 S.W.2d 479 (1946).

17-90-107. Subpoenas.

A subpoena is to be directed to the sheriff of any county where a witness resides or is found. It shall be served and returned in the same manner as subpoenas in civil actions in the circuit courts are served and returned.

History. Acts 1941, No. 94, § 8; A.S.A. 1947, § 72-811.

17-90-108. Requirement to provide eyeglass prescription.

(a)(1) If at the completion of an ophthalmic examination by any licensed optometrist or by any physician who practices as an ophthalmologist in this state the practitioner recommends as a result of the examination that the patient needs eyeglasses of common availability within the state, then the optometrist or physician practicing as an ophthalmologist shall upon request of the patient provide to the patient a complete and accurate written prescription at no additional charge.

(2)(A) Contact lens prescriptions, written and signed, shall be released without additional charge upon request of the patient after the completion of the fitting and upon payment for the examination and fitting.

(B) Contact lens prescriptions released and filled shall be dispensed, sold, and supplied only after positive verification in accordance with the laws of the State of Arkansas and the rules and regulations promulgated and administered by the State Board of Optometry.

(3) A written contact lens prescription shall expire one (1) year after the date of the completion of the contact lens fitting unless there is a medical reason that warrants a prescription for less than one (1) year.

(b) The respective licensing boards of optometry and physicians who practice as ophthalmologists and oculists shall provide for the revocation, suspension, or refusal to renew the license of an optometrist, or of a physician who practices as an ophthalmologist or oculist, licensed by them, who repeatedly or flagrantly violates the provisions of this section.

(c) The provisions of this section shall be supplemental to the laws of this state pertaining to the licensing of optometrists and the practice of optometry and the laws pertaining to physicians and surgeons who practice as ophthalmologists and oculists.

History. Acts 1977, No. 878, §§ 1, 2; A.S.A. 1947, §§ 72-822, 72-822n; Acts 2003, No. 866, § 1.

Cross References. Arkansas Medical Practices Act — Licensing, § 17-95-401 et seq.

17-90-109. Regulation of contact lenses.

(a) No person, firm, corporation, or other legal entity located outside the State of Arkansas shall fill, ship, mail, or deliver through electronic mail, the Internet, alternative channels, or other means contact lenses, vision correcting contact lenses that have been medicated with legend drugs approved by the Food and Drug Administration as of January 1, 2009, or prescriptions for contact lenses to a resident of Arkansas without first having:

(1) Registered and paid all applicable fees required by the State Board of Optometry;

(2) Possession of a positively verified written, signed, and unexpired contact lens prescription issued, dispensed, sold, or supplied by a licensed optometrist or ophthalmologist in compliance with the laws of the State of Arkansas and all rules and regulations promulgated by the board; and

(3) Registered to do business with the Secretary of State and designated a registered agent for service of process.

(b)(1) If a nonresident person, firm, corporation, or legal entity fails to comply with the requirements of subsection (a) of this section, service of process may be perfected in accordance with the provisions of § 17-90-106.

(2) Alternatively, the optometrist or ophthalmologist dispensing, selling, or supplying the contact lenses shall be deemed a valid agent for service of process for the nonresident person, firm, corporation, or legal entity.

(c)(1) Optometrists and ophthalmologists licensed to practice in Arkansas and a person, firm, corporation, or other legal entity outside the State of Arkansas authorized under subsection (a) of this section may sell, prescribe, or dispense vision correcting contact lenses that have been medicated with legend drugs approved by the Food and Drug Administration as of January 1, 2009.

(2) This subsection does not authorize any optometrist, person, firm, or other legal entity to dispense:

(A) Contact lenses medicated with drugs listed in Schedules I and II of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-508;

(B) Medicated contact lenses that are not vision correcting; or

(C) Medicated contact lenses for any purpose other than the diagnosis or treatment of diseases and conditions of the eye, lids, and adnexa.

History. Acts 2003, No. 866, § 2; 2009, No. 449, § 1.

Amendments. The 2009 amendment inserted “vision correcting contact lenses

... January 1, 2009” in the introductory language of (a) and made a related change; and added (c).

17-90-110. Limitation on liability.

Any optometrist or ophthalmologist who releases a contact lens prescription in accordance with § 17-90-108(a)(2) shall not be liable for any damages for injury resulting from the purchasing, manufacturing, or dispensing of the contact lenses unless the contact lens seller and the contact lens prescriber are the same person.

History. Acts 2003, No. 866, § 2.

17-90-111. Loans to optometry students.

(a) The Department of Higher Education shall provide a loan from the Higher Education Grants Fund Account that is in excess of the Southern Regional Education Board grant funds to any optometry student:

- (1) Who is bona fide resident of the state;
- (2) Who is enrolled in an optometry professional program outside the state; and
- (3) For whom any part of the out-of-state tuition is paid by the State of Arkansas through the Southern Regional Education Board grant funds.

(b) A loan authorized by this section:

- (1) Shall not exceed five thousand dollars (\$5,000) annually;
- (2) Shall be made:
 - (A) On an annual basis not to exceed the combined total of four (4) years; and
 - (B) At a rate of interest determined by the department, but not to exceed four percent (4%);
- (3) May be forgiven at the rate of one (1) year’s loan for one (1) year’s practice in Arkansas;
- (4) May be deferred, but for no longer than five (5) years, for the following reasons:
 - (A) Military service;
 - (B) Special training; or
 - (C) Extraordinary circumstances as determined by the department; and
- (5) Shall be in addition to Southern Regional Education Board grant funds.

History. Acts 2007, No. 488, § 1.

SUBCHAPTER 2 — STATE BOARD OF OPTOMETRY

SECTION.

- 17-90-201. Appointment of members.
- 17-90-202. Compensation of members and secretary.
- 17-90-203. Meetings — Officers — Records.

SECTION.

- 17-90-204. Powers and duties.
- 17-90-205. Disposition of funds — Secretary-treasurer's bond.

Publisher's Notes. Acts 1993, Nos. 211 and 323, § 1 provided: "Arkansas Code 17-90-404 is hereby repealed and the Optometric Therapeutic Committee is hereby abolished and all rights, duties and responsibilities of the Committee are delegated to the Arkansas State Board of Optometry."

Cross References. Board members not to be held personally liable for actions as board members, § 17-80-103.

Effective Dates. Acts 1915, No. 123, § 13: effective on passage. Emergency declared.

Acts 1941, No. 94, § 18: became law without Governor's signature, Feb. 25, 1941. Emergency clause provided: "The Legislature hereby finds that the public has been injured through the activities of certain persons, firms and corporations not licensed to practice optometry, and an emergency is hereby declared to exist, and in order to protect the public peace, health and safety this act shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 102, § 9: Feb. 26, 1957. Emergency clause provided: "The Legislature hereby finds that the public has been injured through the activities of certain persons, firms and corporations not licensed to practice optometry, and an emergency is hereby declared to exist, and in order to protect the public peace, health and safety this act shall be in full force and effect from and after its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1035, § 3: Jan. 27, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that the standardization of mileage reimbursement for members of the state's boards and commissions will alleviate many discrepancies and inequities in existing laws

and will allow such members to receive travel reimbursement commensurate with that paid to state employees. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an

emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 862, § 3: Apr. 13, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1035 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 474, § 5: Mar. 12, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present law does not specifically authorize the State Board of Optometry to levy civil penalties for violations of the laws or regulations relating to optometry; that such authority would enable the Board to more effectively and efficiently administer and enforce the laws and regulations relating to optom-

etry and that this act is designed to grant such authority and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-90-201. Appointment of members.

The State Board of Optometry shall consist of seven (7) members appointed by the Governor for terms of five (5) years:

(1) Five (5) members shall be licensed optometrists who have been engaged in the regular practice of optometry in this state for a period of three (3) years. Any vacancy shall be filled by a successor appointed from a list of three (3) members submitted by the Arkansas Optometric Association; and

(2) Two (2) members shall not be actively engaged in or retired from the profession of optometry. One (1) shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly. Both shall be appointed from the state at large, subject to confirmation by the Senate. The two (2) positions may not be held by the same person. Both shall be full voting members but shall not participate in the grading of examinations. All vacancies shall be filled in a like manner.

History. Acts 1941, No. 94, § 2; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-802.

Publisher's Notes. The terms of the members of the State Board of Optometry, other than the representatives of consum-

ers and the elderly, are arranged so that one term expires every year.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

CASE NOTES

Cited: Duren v. Arkansas State Bd. of Optometry, 211 Ark. 565, 201 S.W.2d 578 (1947).

17-90-202. Compensation of members and secretary.

(a) Members of the State Board of Optometry may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(b) Expense reimbursement and stipends in accordance with § 25-16-901 et seq. shall be paid from the fees collected by the board.

(c) The Secretary of the State Board of Optometry shall receive such additional salary as may be fixed by the board.

History. Acts 1941, No. 94, § 4; 1957, No. 102, § 1; 1975 (Extended Sess., 1976), No. 1035, § 1; A.S.A. 1947, §§ 6-616, 72-805; reen. Acts 1987, No. 862, § 1; 1997, No. 250, § 163.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 862, § 1.

Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

17-90-203. Meetings — Officers — Records.

(a) The State Board of Optometry shall meet at least two (2) times each year. At the first regular meeting, the board members shall elect a president, a vice president, and a secretary-treasurer.

(b) A record of its proceedings shall be kept which shall be open for public inspection at reasonable times.

(c) The board shall make a report annually to the Governor showing all receipts and disbursements of moneys and a summary of all business transacted during the year.

History. Acts 1941, No. 94, § 3; A.S.A. 1947, § 72-803.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

17-90-204. Powers and duties.

The State Board of Optometry shall have the following powers in addition to those conferred elsewhere within this chapter:

(1) To make rules and regulations for the administration and enforcement of this chapter;

(2) To revoke, suspend, or refuse to renew any certificate of license in the manner and for the causes set forth in this chapter;

(3) To determine what acts on the part of any person licensed under this chapter shall constitute unprofessional conduct;

(4) To employ or retain the services of attorneys and other necessary assistants in carrying out the provisions of this chapter;

(5) To bring suit in its proper name to enforce or restrain the violation of any provision of this chapter;

(6) To administer oaths, to have an official seal, or to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, papers, or documents pertinent to any matters coming before the board; and

(7)(A) To levy civil penalties, after providing notice and a hearing, in an amount not to exceed one thousand dollars (\$1,000) for each violation against those individuals, firms, or corporations found to be in violation of this chapter or rules and regulations promulgated thereunder.

(B) These penalties shall be used for the purposes of defraying the expenses of the board and as required for carrying out the provisions of this chapter.

(C) These penalties shall be in addition to other penalties which may be imposed by the board pursuant to this chapter.

(D) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the board shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

History. Acts 1941, No. 94, § 8; A.S.A. 1947, § 72-811; Acts 1993, No. 474, § 1.

CASE NOTES**Constitutionality.**

This section, in giving to the board power to determine what acts shall constitute unprofessional conduct, is not void on

ground that mere opinion or caprice may control the members of the board. *Melton v. Carter*, 204 Ark. 595, 164 S.W.2d 453 (1942).

17-90-205. Disposition of funds — Secretary-treasurer's bond.

(a) All renewal fees and all examination and application fees shall be used by the State Board of Optometry to pay its expenses in administering this chapter.

(b)(1) All moneys received by the board shall be disbursed by the Secretary-treasurer of the State Board of Optometry, who shall furnish surety bond.

(2) The secretary-treasurer shall keep a true and faithful account of all moneys received and all moneys expended and shall file annually with the Governor a report of all financial transactions duly audited by an independent accountant.

(c) All moneys not expended or used by the board to pay expenses in administering this chapter shall be retained by the board from year to year to be expended for the purposes and intentions expressed in this chapter.

(d) The secretary-treasurer shall execute a bond for the state in a sum to be fixed by the board conditioned on the faithful performance of the duties of his or her office.

History. Acts 1915, No. 123, § 6; C. & M. Dig., § 8256; Pope's Dig., § 10754; Acts 1941, No. 94, § 6; 1957, No. 102, § 3; A.S.A. 1947, §§ 72-804, 72-808.

A.C.R.C. Notes. The operation of subsection (d) of this section was suspended by adoption of a self-insured fidelity bond

program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

CASE NOTES

Cited: Duren v. Arkansas State Bd. of Optometry, 211 Ark. 565, 201 S.W.2d 578 (1947).

SUBCHAPTER 3 — LICENSING

- SECTION.
17-90-301. Examinations — Fees.
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Cross References. Continuing education requirements, § 17-80-104.

Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1941, No. 94, § 18: became law without Governor's signature, Feb. 25, 1941. Emergency clause provided: "The Legislature hereby finds that the public has been injured through the activities of certain persons, firms and corporations not licensed to practice optometry, and an emergency is hereby de-

clared to exist, and in order to protect the public peace, health and safety this act shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 102, § 9: Feb. 26, 1957. Emergency clause provided: "The Legislature hereby finds that the public has been injured through the activities of certain persons, firms and corporations not licensed to practice optometry, and an emergency is hereby declared to exist, and in order to protect the public peace, health and safety this act shall be in full force

and effect from and after its passage and approval.”

Acts 1991, No. 397, § 6: Mar. 7, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that the current law regarding the licensure of optometrists is outdated with regard to residency requirements and that, in order to avoid potential litigation, these sections of the optometric licensing law should be changed as soon as possible. Therefore, in order for these changes to have effect with the next examination cycle, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2007, No. 431, § 2: Mar. 22, 2007. Emergency clause provided: “It is found

and determined by the General Assembly of the State of Arkansas that the State Board of Optometry conducts examinations for licensing optometrists in February and July of each year; and that this act is necessary because the board needs to apply the new criterion set by this bill to determine those applicants qualified to take next July’s examination. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

Ark. L. Rev. Case Notes — Equity — Injunctions — Unlicensed Practice of a Profession, 11 Ark. L. Rev. 177.

17-90-301. Examinations — Fees.

(a) No person except those already licensed by the State Board of Optometry shall practice optometry until he or she has:

(1) Successfully passed all examinations as the board may require in the rules and regulations of the board, to include, but not be limited to, clinical examinations if required; and

(2) Registered and received a certificate of registration which shall have conspicuously printed on its face the definition of optometry set forth in § 17-90-101.

(b) Every applicant for examination shall present satisfactory evidence that he or she is:

(1) Over twenty-one (21) years of age;

(2) A successful candidate having passed all parts of the National Board of Optometry examination since January 1, 1997;

(3) Of good moral character; and

(4) A graduate of a college of optometry that has been accredited by the Accreditation Council on Optometric Education of the American Optometric Association.

(c) All persons making application for examination and for registration shall be required to pay to the Secretary-treasurer of the State Board of Optometry a fee in a reasonable amount to be fixed by the board.

(d)(1) Beginning July 1, 2003, the board will issue licenses only for optometric physicians to persons who meet:

- (A) The requirements of this section;
- (B) The requirements of § 17-90-401; and
- (C) The requirements of rules of the board.

(2) A person who was licensed as an optometrist prior to July 1, 2003, and who does not meet the standard for licensure as an optometric physician may continue to renew the license as an optometrist but may only practice in the manner prescribed by the rules of the board.

History. Acts 1941, No. 94, § 5; 1957, No. 102, § 2; A.S.A. 1947, § 72-806; Acts 1991, No. 397, § 1; 2001, No. 506, § 1; 2003, No. 288, § 1; 2007, No. 431, § 1.

Amendments. The 2007 amendment substituted "January 1, 1997" for "January 1, 1987" in (b)(2).

CASE NOTES

Constitutionality.

This section is not void for improper delegation of power in not indicating how Class A schools shall be designated. *Melton v. Carter*, 204 Ark. 595, 164 S.W.2d 453 (1942).

Cited: *Duren v. Arkansas State Bd. of Optometry*, 211 Ark. 565, 201 S.W.2d 578 (1947); *Brown v. Cheney*, 233 Ark. 920, 350 S.W.2d 184 (1961).

17-90-302. Reciprocity.

(a) Any person from another state desiring to engage in the practice of optometry in this state may be issued a certificate at the sole discretion of the State Board of Optometry without a written examination upon satisfactory proof that he or she:

- (1) Is qualified under this chapter;
- (2) Has been issued a certificate or license to practice optometry by a state having licensure requirements at least equal in scope and standards to Arkansas with whom the board has an agreement of reciprocity; and
- (3) Has engaged in the practice of optometry for a period of three (3) years in the other state and has complied with all the requirements of the Arkansas licensure law at the time of application.

(b) He or she shall be required to pay a fee to the Secretary-treasurer of the State Board of Optometry for registration in a reasonable amount to be fixed by the board.

History. Acts 1941, No. 94, § 7; 1957, No. 102, § 4; A.S.A. 1947, § 72-809; Acts 1991, No. 397, § 2.

17-90-303. License — Registration and display — Statement of services.

(a) Any optometrist practicing in any county in this state shall display his or her license in a conspicuous place in his or her office.

(b) Any optometrist practicing away from his or her office shall deliver to each person obtaining services from the optometrist a statement dated and signed by the optometrist setting forth the amount charged, the optometrist's address, and the number of the optometrist's certificate.

History. Acts 1941, No. 94, § 11; A.S.A. 1947, § 72-814; Acts 2001, No. 506, § 2.

17-90-304. Renewal — Failure to renew.

(a) All registered optometrists shall annually pay a reasonable sum, to be fixed by the State Board of Optometry, to the Secretary-treasurer of the State Board of Optometry as a license renewal fee on or before February 1 each year.

(b) The failure to pay the license renewal fee by any licensee may cause his or her license to be revoked or suspended, or other such penalties as provided in § 17-90-305, after thirty (30) days' notice.

History. Acts 1941, No. 94, § 6; 1957, No. 102, § 3; A.S.A. 1947, § 72-808; Acts 2001, No. 506, § 3.

CASE NOTES

Cited: Duren v. Arkansas State Bd. of Optometry, 211 Ark. 565, 201 S.W.2d 578 (1947).

17-90-305. Revocation, suspension, or refusal to renew — Grounds.

(a) The State Board of Optometry shall have the power to revoke, suspend, place a license on probation for such time as the board shall order and under such conditions as the board may impose, to ensure the health and safety of the citizens of Arkansas, impose a fine of up to one thousand dollars (\$1,000) per violation, refuse to renew a license or reprimand the licensee, or any combination thereof, if the board finds that the individual has committed any of the following offenses:

- (1) Perpetrating a fraud on the public;
- (2) Presenting false information or documentation to the board in an attempt to obtain or to retain a license;
- (3) Conviction of a felony or the conviction of a misdemeanor, if the misdemeanor conduct would denote an impairment in the ability to practice optometry;
- (4) Habitual drunkenness;
- (5) Habitual or excessive use of schedule medication or other habit-forming or mind-altering drugs that would impair the ability to practice optometry;

(6) Violation of the laws of the United States or the State of Arkansas regulating the possession, distribution, and prescribing of schedule medication;

(7) Flagrant overcharging or billing;

(8) False representation of materials;

(9) False or misleading advertising;

(10) Gross incompetency in the treatment of patients;

(11) Unprofessional conduct;

(12) Suffering from mental disease or defect rendering the licensee incompetent to practice optometry as a result of proof given by a licensed medical psychiatrist in the State of Arkansas and in combination with testimony of a licensed optometrist;

(13) Violation of any provision of the laws of Arkansas regulating the practice of optometry;

(14) Violation of any rule or regulation of the board;

(15) Violation of any term of probation or order rendered by the board; or

(16) Having been found in violation of a statute or a rule or regulation governing the practice of optometry by the optometry licensing authority or agency of another state.

(b) In addition to those acts which may be prescribed by the board as unprofessional conduct, the following shall be deemed by the board to be unprofessional:

(1) The violation of any provision of this chapter; or

(2) The acceptance of employment either directly or indirectly by a licensed optometrist from an optometrist not licensed in Arkansas or from an unlicensed person, firm, or corporation engaged in any business or profession to assist it, him or her, or them, in practicing optometry in this state.

History. Acts 1941, No. 94, § 9; A.S.A. 1947, § 72-812; Acts 2001, No. 506, § 4; 2007, No. 123, § 2.

Amendments. The 2007 amendment added (a)(16) and made related changes.

CASE NOTES

Constitutionality.

Provision for revocation of license of optometrist accepting employment from an unlicensed person, firm, or corporation

was not a denial of equal protection of the law in violation of U.S. Const., Amend. 14. *Melton v. Carter*, 204 Ark. 595, 164 S.W.2d 453 (1942).

17-90-306. Revocation, suspension, or refusal to renew — Procedures.

(a) No certificate of license shall be rejected for renewal, suspended, or revoked for any cause, unless the person accused has been given at least thirty (30) days' notice in writing setting forth the nature of the charges against him or her.

(b) The accused person must also be afforded a public hearing at which time the person accused shall have the right to appear with or

without counsel, to confront witnesses who appear against him or her, and to adduce testimony in his or her own behalf.

(c) A record of the charges filed and the action taken thereon shall be prepared.

(d) All hearings of the State Board of Optometry and appeals from decisions or orders of the board will be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1941, No. 94, § 10; A.S.A. 1947, § 72-813; Acts 2001, No. 506, § 5.

SUBCHAPTER 4 — OPTOMETRIC DRUGS

SECTION.

17-90-401. State Board of Optometry — Powers and duties.

17-90-402. Standards — Noncompliance.

SECTION.

17-90-403. Authority to possess, administer, and prescribe.

17-90-404. [Repealed.]

Effective Dates. Acts 1941, No. 94, § 18: became law without Governor's signature, Feb. 25, 1941. Emergency clause provided: "The Legislature hereby finds that the public has been injured through the activities of certain persons, firms and corporations not licensed to practice optometry, and an emergency is hereby declared to exist, and in order to protect the public peace, health and safety this act shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 710, § 5: Apr. 2, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly of the State of Arkansas that the provisions of this act are necessary for the orderly conduct of the practice of optometry and the necessary eye care of the people of Arkansas and to insure the continued and immediate eye care of the people. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 836, § 3: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law requires that the Arkansas State Committee on Optometric Drugs meet at least quarterly; that the business of the committee may sometimes justify quarterly meetings but that

this should be left to the chairman and should not be mandated by law; and that this act is designed to provide that the committee shall meet at the call of the chairman or a majority of the committee, but at least annually, and should, in the interest of efficiency and economy, be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 101, § 7: emergency failed to pass. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds that it is essential to the protection of residents of the State that qualified optometrists be authorized to practice at their highest level of competence which includes but is not limited to the possessing, administering and prescribing of those drugs that are useful and necessary to the practice of the profession and that this Act is designed to accomplish this purpose and should be given effect at the earliest practical date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved Mar. 3, 1987.

Acts 1997, Nos. 176 and 186, § 8: Feb. 17, 1997. Emergency clause provided: "It

is hereby found and determined by the General Assembly of the State of Arkansas that the public health and welfare of the citizens of the state of Arkansas will be benefited by allowing Doctors of Optometry to provide all practices, procedures, and services which the Arkansas State Board of Optometry determines they are qualified to provide; that the current law does not allow Doctors of Optometry to provide such practices, procedures, and services; and that this act so permits. Therefore an emergency is de-

clared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-90-401. State Board of Optometry — Powers and duties.

The State Board of Optometry shall have the following rights and responsibilities:

(1) To enforce, amend, or repeal the rules and regulations promulgated by the board;

(2)(A) To approve those optometrists who shall be authorized to possess, administer, and prescribe those drugs approved by this subchapter.

(B)(i) No optometrist shall be so approved until he or she has:

(a) Exhibited his or her qualifications by passing an examination prepared or approved by the board; and

(b) Served an internship program established by the board, supervised and certified by a board-certified ophthalmologist, which internship includes at least one hundred (100) hours of supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa.

(ii)(a) The examination shall include, but not be limited to, written questions designed to test knowledge of the proper use and characteristics of the drugs approved by the board.

(b) The examination shall be offered not less often than annually;

(3) To promulgate educational standards, which shall be used as prerequisites to authorization to use those drugs approved in this subchapter. Educational standards shall cover only the area of the proper use and characteristics of the drugs approved by the board and emergency first aid techniques;

(4) To approve, consistent with the rules and regulations promulgated by the board, those acts, services, procedures, and practices which may be performed by a licensed optometrist and, prior to authorization, by appropriate examination, establish the competence of every optometrist to perform the approved acts, services, procedures, and practices;

(5)(A) To prohibit any optometrist who is a graduate of a school or college of optometry as of July 20, 1987, who has not already successfully completed a postgraduate course of study of transcript

quality in ocular therapy and pharmacology from an accredited school or college of optometry, which complies with all the prerequisites and requirements of the board and this subchapter, from being approved to perform any of the additional acts, services, procedures, and practices which are specifically authorized in §§ 17-90-101(a) and 17-90-403 until he or she has successfully complied with all the prerequisites and requirements of the board and this subchapter.

(B) The express purpose of this subdivision (5) is to prohibit the “grandfathering” of currently licensed optometrists unless and until they have completed the prerequisites and requirements of the board and this subchapter established by this subdivision (5). Nothing in this subdivision (5) shall be construed to prohibit any optometrist currently licensed from continuing to practice optometry and be relicensed, but until he or she has met the requirements of this subchapter and the rules and regulations of the board, he or she shall not be allowed to utilize the additional treatments provided for in this subchapter;

(6) To promulgate rules and regulations governing the prescribing, administering, and use of all drugs authorized in this chapter by all licensed and board-certified primary care optometrists in the diagnosis, treatment, or management only of conditions of the human eye, lid, adnexa, or visual system; and

(7) To promulgate rules and regulations which authorize board-certified primary care optometrists to order any procedure or laboratory test necessary in the examination, diagnosis, treatment, or management of diseases or conditions of the human eye, lid, adnexa, or visual system.

History. Acts 1941, No. 94, § 1; 1979, 1987, No. 101, § 1; 1997, No. 176, § 2; No. 710, § 1; 1981, No. 836, § 1; 1985, No. 1997, No. 186, § 2. 875, § 1; A.S.A. 1947, § 72-801; Acts

17-90-402. Standards — Noncompliance.

(a) Reasonable standards applicable only to those optometrists who are authorized to use drugs for referral of eye patients with eye pathology discoverable by the use of drugs shall be promulgated only if the board finds that the standards are required to protect the health of the citizens of the state.

(b) The standards shall not require referral in cases in which an optometrist is aware that a condition has been previously diagnosed by a physician.

(c) If these standards are promulgated, they shall be enforced by the State Board of Optometry.

(d) Any violation of these standards shall be deemed unprofessional conduct under this chapter.

(e) If the board finds that an optometrist has habitually violated the standards of referral, then the board shall withdraw the authority to use drugs from that optometrist.

History. Acts 1941, No. 94, § 1; 1979, 875, § 1; A.S.A. 1947, § 72-801; Acts No. 710, § 1; 1981, No. 836, § 1; 1985, No. 1987, No. 101, § 1.

17-90-403. Authority to possess, administer, and prescribe.

One who is engaged in the practice of optometry as a profession as defined in § 17-90-101 and who has the education and professional competence as determined by the State Board of Optometry and who has satisfied the educational requirements established by the State Board of Optometry from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Post-Secondary Accreditation, the United States Department of Education, or the Arkansas Board of Higher Education and has met the requirements of § 17-90-401 is authorized to possess, administer, and prescribe pharmaceutical agents for the diagnosis or treatment only of conditions of the eye, lids, or adnexa, except those listed in Schedules I and II of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510.

History. Acts 1941, No. 94, § 1; 1979, 1987, No. 101, § 1; 1997, No. 176, § 3; No. 710, § 1; 1981, No. 836, § 1; 1985, No. 1997, No. 186, § 3. 875, § 1; A.S.A. 1947, § 72-801; Acts

17-90-404. [Repealed.]

Publisher's Notes. This section, concerning the Optometric Therapeutic Committee, was repealed by Acts 1993, Nos. 211 and 323, § 1. The section was derived from Acts 1941, No. 94, § 1; A.S.A. 1947, § 72-801; Acts 1987, No. 101, § 1. Acts 1993, Nos. 211 and 323, § 1

provided: "Arkansas Code 17-89-404 is hereby repealed and the Optometric Therapeutic Committee is hereby abolished and all rights, duties and responsibilities of the Committee are delegated to the Arkansas State Board of Optometry."

SUBCHAPTER 5 — IMPAIRED OPTOMETRIST TREATMENT PROGRAM

SECTION.

- 17-90-501. Title.
- 17-90-502. Purpose.
- 17-90-503. Definitions.
- 17-90-504. Authority.
- 17-90-505. Procedures.
- 17-90-506. Evaluation.

SECTION.

- 17-90-507. Request for restricted license.
- 17-90-508. Confidentiality of records.
- 17-90-509. Participation in treatment program.
- 17-90-510. Limitation on liability.

Effective Dates. Acts 1997, Nos. 176 and 186, § 8: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the public health and welfare of the citizens of the state of Arkansas will be benefited by allowing Doctors of Optometry to provide all practices, procedures, and services

which the Arkansas State Board of Optometry determines they are qualified to provide; that the current law does not allow Doctors of Optometry to provide such practices, procedures, and services; and that this act so permits. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and

safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during

which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-90-501. Title.

This subchapter shall be known as the "Impaired Optometrist Treatment Program".

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4.

17-90-502. Purpose.

The purpose of this subchapter is to provide for the identification and treatment of optometrists licensed under the Arkansas Optometry Law, § 17-90-101 et seq., who suffer from impairment, in order to promote the public health and safety and to ensure the continued availability of the skills of highly trained optometric professionals for the benefit of the public.

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4.

17-90-503. Definitions.

As used in this subchapter:

(1) "Board" means the State Board of Optometry with reference to optometrists;

(2) "Impaired" or "impairment" means the presence of the diseases of alcoholism, drug abuse, or mental illness;

(3) "Impaired Optometrist Treatment Program" means the State Board of Optometry-approved or sponsored program for the detection, intervention, and monitoring of impaired providers;

(4)(A) "Professional incompetence" means the inability or failure of an optometrist to practice his or her profession with reasonable skill and safety.

(B) Impairment in and of itself shall not give rise to a presumption of professional incompetence; and

(5) "Treatment program" means a plan of care and rehabilitation services provided by those organizations and persons authorized to provide such services for impaired providers taking part in the programs provided under this subchapter.

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4.

17-90-504. Authority.

The State Board of Optometry may undertake the functions and responsibilities to carry out the purposes of this subchapter, which may include any of the following:

- (1) Contracting with providers of treatment programs;
- (2) Receiving and evaluating reports of suspected impairment from any source;
- (3) Intervening in cases of verified impairment;
- (4) Referring impaired optometrists to treatment programs;
- (5) Monitoring the treatment and rehabilitation of impaired optometrists;
- (6) Providing posttreatment monitoring and support of rehabilitated impaired optometrists;
- (7) Suspending, limiting, or restricting the optometrist's license for the duration of the impairment; and
- (8) Performing such other activities as the board deems necessary to accomplish the purposes of this subchapter.

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4.

17-90-505. Procedures.

The State Board of Optometry shall develop procedures for:

- (1) Informing each participant in the Impaired Optometric Treatment Program of the program procedures, responsibilities of program participants, and the possible consequences of noncompliance with the program; and
- (2) Voluntary self-reporting and treatment program participation by an optometrist.

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4.

17-90-506. Evaluation.

(a) If the State Board of Optometry has reason to believe that an optometrist is impaired, the board may cause an evaluation of the optometrist to be conducted for the purpose of determining if there is an impairment.

(b) If the board finds after examination and hearing that a licensee is impaired, it may take one (1) or more of the actions specified in this subchapter.

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4.

17-90-507. Request for restricted license.

(a) An impaired optometrist may request in writing to the State Board of Optometry a restriction of his or her license to practice.

(b) The board may grant such a request for restriction and shall have the authority to attach conditions to the licensure of the optometrist to practice optometry within specified limitations.

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4.

17-90-508. Confidentiality of records.

(a)(1) Notwithstanding any provision of state law, records of the State Board of Optometry pertaining to an impaired optometrist shall be exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., shall be kept confidential and shall not be subject to discovery or subpoena.

(2) No person in attendance at any meeting of the board concerning an impaired optometrist shall be required to testify as to any discussions or proceedings.

(b) However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such action merely because they were presented during the proceedings of the board meeting on an optometrist, nor shall any person who testifies before the board meeting on an optometrist, or who is a member of the board, be prevented from testifying as to matters within his or her knowledge, but the witness shall not be asked about his or her testimony before the board or about opinions formed by him or her as a result of the board hearings.

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4.

17-90-509. Participation in treatment program.

An impaired optometrist who is participating in or has successfully completed a treatment program pursuant to this subchapter shall not be limited or restricted in his or her professional practice or excluded from any hospital staff solely because of such participation.

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4.

17-90-510. Limitation on liability.

(a) Notwithstanding any other provisions of law, the State Board of Optometry and committees and members thereof shall not be held liable in damages to any person within the scope of their responsibilities pursuant to this subchapter.

(b) No person who in good faith and without malice makes a report pursuant to this subchapter to the board shall be liable for damages to any person.

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4.

CHAPTER 91
OSTEOPATHS

SECTION.
17-91-101. Osteopathic physician — Li-
censing requirements.

SECTION.
17-91-102. Examination.
17-91-103. Effect of licensing.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-90-101 et seq.
Cross References. Immunity from liability for volunteer services by retired physicians and surgeons, § 17-95-106.

Licenses and permits, removal of dis-
qualification for criminal offenses, § 17-1-
103.
Effective Dates. Acts 1971, No. 650,
§ 7: effective on passage.

RESEARCH REFERENCES

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tors and osteopathic physicians to partici-
pate in public medical welfare programs. 8
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Physician's or other healer's conduct in
connection with defense of or resistance to
malpractice action as ground for revoca-
tion of license or other disciplinary action.
44 A.L.R.4th 248.
Filing of false insurance claims for
medical services as ground for disciplin-
ary action against dentist, physician, or
other medical practitioner. 70 A.L.R.4th
132.
Liability of osteopaths for medical mal-
practice. 73 A.L.R.4th 24.
Rights as to notice and hearing in pro-
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care providers," or the like, whose actions

fall within statutes specifically governing
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tice. 12 A.L.R.5th 1.
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§ 9 and § 26 et seq.
C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

17-91-101. Osteopathic physician — Licensing requirements.

(a) The Arkansas State Medical Board shall accept for licensure by
examination any person who:
(1) Is at least twenty-one (21) years of age;

- (2) Is a citizen of the United States;
- (3) Is of good moral character;
- (4) Has not been guilty of acts constituting unprofessional conduct as defined in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.;
- (5) Is a graduate of an osteopathic college of medicine whose course of study has been recognized by the Department of Education of the American Osteopathic Association; and
- (6) Has completed a one-year internship in a hospital approved by the American Medical Association or the American Osteopathic Association.

(b) Applicants for such a licensure shall pay the fees required by the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq..

History. Acts 1971, No. 650, §§ 1, 2; A.S.A. 1947, §§ 72-911, 72-912; Acts 2001, No. 929, § 2.

Publisher's Notes. Acts 1971, No. 650, § 5, abolished the State Board of Osteopathic Examiners. It provided that persons licensed to practice osteopathy on July 1, 1970, shall be registered by the

Arkansas State Medical Board and, upon application and payment of the fees set out in the Arkansas Medical Practices Act, § 17-95-201 et seq., should be issued a regular license to practice medicine and surgery.

Cross References. Physicians and surgeons, § 17-95-101 et seq.

17-91-102. Examination.

- (a) The examination given to the applicants shall be:
 - (1) The same examination given to all other applicants for medical licensure;
 - (2) Given at the same time and place as the examination given to the other applicants; and
 - (3) Graded as all other examinations.
- (b) The National Board of Osteopathic Medical Examiners develops examinations for licensure of osteopathic physicians.

History. Acts 1971, No. 650, § 3; A.S.A. 1947, § 72-913; Acts 2001, No. 929, § 3.

17-91-103. Effect of licensing.

(a) The license issued to a person meeting the qualifications set out in this chapter and successfully passing the examination shall be the same license to practice medicine and surgery in the State of Arkansas as is regularly issued by the Arkansas State Medical Board and shall entitle the holder thereof to practice medicine and surgery in the State of Arkansas.

(b) The holder of the license shall be subject to all the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., including the payment of the fees set out therein.

(c) Any reference to “medical doctor” or “physician” shall be deemed to include a Doctor of Osteopathy, or D.O., or an osteopathic physician unless any of those terms is specifically excluded.

History. Acts 1971, No. 650, § 4; A.S.A. 1947, § 72-914; Acts 2001, No. 929, § 4.

CHAPTER 92
PHARMACISTS AND PHARMACIES

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS STATE BOARD OF PHARMACY.
- 3. LICENSED PHARMACISTS.
- 4. PHARMACIES.
- 5. GENERIC DRUGS AND PRICE LISTS.
- 6. HOSPITAL PHARMACIES ACT.
- 7. PROGRAM FOR PHARMACISTS IMPAIRED BY CHEMICAL DEPENDENCY.
- 8. CERTIFICATION AND REGISTRATION OF PHARMACIST ASSISTANTS.
- 9. SUPPLIERS.
- 10. ARKANSAS INTERNET PRESCRIPTION CONSUMER PROTECTION ACT.
- 11. PRESCRIPTION DRUG REDISPENSING PROGRAM.
- 12. ARKANSAS PHARMACY AUDIT BILL OF RIGHTS.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-6 may not apply to subchapters 7-12 and §§ 17-92-111, 17-92-112, 17-92-209, 17-92-316, 17-92-317, and 17-92-412 which were enacted subse-

quently.
Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-91-101 et seq.

RESEARCH REFERENCES

ALR. Administrative inspection of and administrative warrants to search pharmacies. 29 A.L.R.4th 264.
Physician’s or other healer’s conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.
Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.
State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance. 13

A.L.R.5th 1.
Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs. 16 A.L.R.5th 390.
Liability of pharmacist who accurately fills prescription for harm resulting to user. 44 A.L.R.5th 393.
Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptive. 54 A.L.R.5th 1.
Am. Jur. 25 Am. Jur. 2d, Drugs, § 69 et seq.
Ark. L. Rev. Legal Control of Business in Arkansas, 5 Ark. L. Rev. 137.
C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-92-101. Definitions.
- 17-92-102. Exemptions.
- 17-92-103. Pharmacy laws unaffected.
- 17-92-104. Privilege tax unaffected.
- 17-92-105. Prohibited acts — Penalties.
- 17-92-106. Injunctions.
- 17-92-107. Prosecutions — Disposition of fines.

SECTION.

- 17-92-108. Fees.
- 17-92-109. Prescriptions for optometrists.
- 17-92-110. Prescriptive authority of advanced practice nurses.
- 17-92-111. Construction of Acts 1997, No. 1204.
- 17-92-112. Prescriptions for physician assistants.

Preambles. Acts 1891, No. 50 contained a preamble which read: "Whereas, in all civilized countries it has been found necessary to regulate the traffic in medicines and poisons and to provide by law for the regulation of the delicate and responsible business of compounding and dispensing the powerful agents used in medicines; and

"Whereas, the safety and welfare of the public are endangered by the sale of poisons by unqualified and ignorant persons; and

"Whereas, the power of physicians to overcome disease depends greatly upon their ability to procure good, unadulterated drugs and skillfully prepared medicines; and

"Whereas, the sophistication and adulteration of drugs and medicines is a specious fraud which should be prevented and suitably punished;

"Therefore...."

Acts 1955, No. 57 contained a preamble which read: "Whereas, the present laws governing the compounding and dispensing of drugs are inadequate, in that the present law allows unlicensed persons to practice under the supervision of registered pharmacists; and

"Whereas, the present law must be modified and adequate provision made to safeguard the health of the people of the State of Arkansas by insuring that only qualified people are allowed to compound and dispense drugs;

"Now, therefore...."

Effective Dates. Acts 1891, No. 50, § 17: effective on passage.

Acts 1903, No. 169, § 3: became law without Governor's signature, Apr. 27, 1903.

Acts 1915, No. 296, § 2: declared effective on passage but effective date invalid

under Arkansas Tax Comm'n v. Moore, 103 Ark. 48, 145 S.W. 199 (1912) and Cunningham v. Walker, 198 Ark. 928, 132 S.W.2d 24 (1939).

Acts 1929, No. 72, § 18: effective on passage.

Acts 1965, No. 480, § 4: approved Mar. 20, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas State Board of Pharmacy has insufficient funds for the proper performance of the functions and duties of said board, which include the supervision and control of the compounding and dispensing of dangerous drugs and narcotics within this state, and that the immediate passage of this act is necessary to provide adequate funds for the efficient performance of the duties of the Pharmacy Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage."

Acts 1971, No. 26, § 5: Feb. 7, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate need for the establishment of an internship program in the practice of pharmacy in the State of Arkansas and a clarification of the definition of the practice of pharmacy and that medical clinics for the poor are in need of immediate pharmaceutical services. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1975, No. 597, § 2: approved Mar. 28, 1975. Emergency clause provided: "It

is hereby found and determined by the General Assembly that the Arkansas State Board of Pharmacy has insufficient funds for the proper performance of the functions and duties of said board, which include the supervision and control of the compounding and dispensing of dangerous drugs and narcotics within this state, and that the immediate passage of this act is necessary to provide adequate funds for the efficient performance of the duties of the Pharmacy Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage.”

Acts 1979, No. 710, § 5: Apr. 2, 1979. Emergency clause provided: “It is hereby found and determined by the Seventy-Second General Assembly of the State of Arkansas that the provisions of this act are necessary for the orderly conduct of the practice of optometry and the necessary eye care of the people of Arkansas and to insure the continued and immediate eye care of the people. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 101, § 7: emergency failed to pass. Emergency clause provided:

“The General Assembly of the State of Arkansas hereby finds that it is essential to the protection of residents of the State that qualified optometrists be authorized to practice at their highest level of competence which includes but is not limited to the possessing, administering and prescribing of those drugs that are useful and necessary to the practice of the profession and that this Act is designed to accomplish this purpose and should be given effect at the earliest practical date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.” Approved Mar. 3, 1987.

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

17-92-101. Definitions.

As used in this chapter:

- (1) “Board” means the Arkansas State Board of Pharmacy;
- (2) “Credentialing” means the issuance of or approval by the Arkansas State Board of Pharmacy of a credential issued to a pharmacist by an agency approved by the board certifying that the pharmacist has met the standards of competency established by the Arkansas State Board of Pharmacy for disease state management or other pharmacy services necessitating a credential;
- (3) “Dentist” means a practitioner of dentistry duly licensed under the laws of this or some other state;
- (4)(A) “Disease state management” means a strategy that utilizes a team-oriented, multidisciplinary approach to improve health care outcomes and quality of care, and when possible, to control health care cost through management of targeted chronic disease states.

(B) Disease state management focuses on improving health care from prevention to diagnosis and treatment to ongoing follow-up.

(C) Disease state management will involve, but not be limited to, patient education, self-care techniques, and outpatient drug therapy management pursuant to a patient care plan;

(5) "Drug" shall include all medicines and preparations recognized in the United States Pharmacopoeia or the National Formulary as substances intended to be used for the care, mitigation, or prevention of disease of either man or other animals;

(6) "Generically equivalent" means a drug that is pharmaceutically and therapeutically equivalent to the drug prescribed;

(7) "Licensed pharmacist" means a person holding a license under the provisions of this chapter;

(8) "Medicine" means a drug or preparation of drugs in suitable form for use as a curative or remedial substance;

(9) "Optometrist" means a practitioner of optometry duly licensed under the laws of this state;

(10) "Patient care plan" means a written course of action that is patient- or physician- or pharmacist-specific and disease-specific for helping a patient to achieve outcomes that improve a patient's quality of life;

(11) "Pharmaceutically equivalent" means drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical, compendious, or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or another nationally recognized compendium;

(12) "Pharmacy" means the place licensed by the Arkansas State Board of Pharmacy in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail;

(13) "Pharmacy care" means the process by which a pharmacist in consultation with the prescribing practitioner identifies, resolves, and prevents potential and actual drug-related problems and optimizes patient therapy outcomes through the responsible provision of drug therapy or disease state management for the purpose of achieving any of the following definite outcomes that improve a patient's quality of life:

(A) Cure of disease;

(B) Elimination or reduction of a patient's symptomology;

(C) Arresting or slowing a disease process; or

(D) Preventing a disease or symptomology;

(14) "Physician" means a practitioner of medicine duly licensed under the laws of this or some other state;

(15) "Poisons" means any drug, chemical, medicine, or preparation liable to be destructive to adult human life in quantities of sixty (60) grains or less;

(16)(A) "Practice of pharmacy" means the learned profession of:

(i)(a) Dispensing, selling, distributing, transferring possession of, vending, bartering, or, in accordance with regulations adopted by the

Arkansas State Board of Pharmacy, administering drugs, medicines, poisons, or chemicals that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription and order of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals.

(b) Except in accordance with regulations adopted by the Arkansas State Board of Pharmacy as recommended by the Medications Administration Advisory Committee, the administration of medications shall be limited to the following classifications of medications: immunizations, vaccines, allergy medications, vitamins, minerals, antihyperglycemics, and antinausea medications.

(c) The administration of medications shall not include the administration of medications to any person under eighteen (18) years of age;

(ii) Placing, packing, pouring, or putting into a container for dispensing, sale, distribution, transfer of, possession of, vending, or bartering any drug, medicine, poison, or chemical that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals;

(iii) Placing in or affixing upon any container described in subdivision (16)(A)(ii) of this section a label required to be placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

(iv) Preparing, typing, or writing labels to be placed in or affixed on any container described in subdivision (16)(A)(ii) of this section, which label is required to be placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

(v) Interpreting prescriptions for drugs, medicines, poisons, or chemicals issued by practitioners authorized by law to prescribe drugs, medicines, poisons, or chemicals that may be sold or dispensed only on prescription;

(vi) Selecting, taking from, and replacing upon shelves in the prescription department of a pharmacy or apothecary drugs, medicines, chemicals, or poisons that are required by the laws of the United States or the State of Arkansas to be sold or dispensed only on prescription of a practitioner authorized by law to prescribe them;

(vii) Compounding, mixing, preparing, or combining drugs, medicines, chemicals, or poisons that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe them;

(viii) Advising and providing information concerning utilization of drugs and devices and participation in drug utilization reviews;

(ix)(a) Performing a specific act of drug therapy management or disease state management delegated to a pharmacist for an indi-

vidual patient based upon a written protocol or a patient care plan approved by a physician, who shall be licensed in this state under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(b) Drug therapy management shall not include the selection of drug products not prescribed by the physician unless the drug products are either named in the physician-initiated protocol or the physician-approved patient care plan;

(x) Providing pharmacy care; and

(xi) Providing pharmacokinetic services.

(B) The provisions of subdivisions (16)(A) and (16)(C) of this section shall not apply to employees of wholesale drug companies or other drug distributors who do not fill prescriptions or sell or dispense drugs to the consumer.

(C)(i) The Arkansas State Board of Pharmacy may permit pharmacy technicians other than pharmacists or interns to perform some or all of those functions described in board regulations under the direct, personal supervision of a licensed pharmacist pursuant to regulations defining the minimum qualifications of such employees, the ratio of pharmacy technicians to supervising pharmacists, and the scope of the duties, practices, and procedures that the Arkansas State Board of Pharmacy determines will promote the delivery of competent, professional pharmaceutical services and promote the public health and welfare. Nothing in this chapter shall be construed as allowing pharmacy technicians to administer medications.

(ii) The conduct of a pharmacy technician is the responsibility of the pharmacist-in-charge and supervising pharmacist of the pharmacy who shall not permit the employee to perform any act, task, or function that involves the exercise of independent judgment by the employee.

(iii) Pharmacy products prepared by pharmacy technicians shall be verified for accuracy by the supervising pharmacist prior to release for patient use, and the verification shall be documented.

(iv) The use of pharmacy technicians in a manner not authorized by this chapter or regulations promulgated hereunder shall be unprofessional conduct by the pharmacist-in-charge and the supervising pharmacist.

(v) It is recognized that hospital pharmacy technicians as defined in § 17-92-602(5) are governed by the Hospital Pharmacies Act, § 17-92-601 et seq., and related Arkansas State Board of Pharmacy regulations developed pursuant to that act;

(17) "Prescription" means an order for medicine or medicines usually written as a formula by a physician, optometrist, dentist, veterinarian, or other licensed medicinal practitioner. It contains the names and quantities of the desired substance, with instructions to the pharmacist for its preparation and to the patient for the use of the medicine at a particular time;

(18) "Proprietary medicines", when not otherwise limited, means remedies that a certain individual or individuals have the exclusive right to manufacture or sell;

(19) "Supervision" means under the direct charge or direction of and does not contemplate any continued absence of such supervision;

(20) "Therapeutically equivalent" means pharmaceutically equivalent drug products that if administered in the same amounts will provide the same therapeutic effect, identical in duration and intensity;

(21) "Veterinarian" means a practitioner of veterinary medicine duly licensed under the laws of this or some other state; and

(22)(A) "Written protocol" means a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by regulation of the Arkansas State Medical Board under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(B) Except for immunizations and vaccinations, which may be general protocols, protocols shall be patient- or physician- or pharmacist-specific for prescriptions or orders given by the physician authorizing the protocol.

History. Acts 1929, No. 72, § 1; Pope's Dig., § 4624; Acts 1955, No. 57, preliminary section; 1971, No. 26, §§ 1, 3; 1983, No. 511, §§ 2, 13; 1985, No. 616, § 2; A.S.A. 1947, §§ 72-1001, 72-1001.1, 72-1044, 72-1046; Acts 1987, No. 101, § 3; 1991, No. 740, § 1; 1997, No. 437, §§ 1, 2; 1997, No. 1204, §§ 1, 2; 1999, No. 105, §§ 1-5; 2001, No. 801, § 1; 2001, No. 910, § 1; 2003, No. 1473, § 34; 2009, No. 355, § 1.

A.C.R.C. Notes. Acts 1997, No. 1204,

§ 5, codified as § 17-92-111, provided: "Nothing in this act shall be construed to authorize or permit any licensed or registered pharmacist to examine, diagnose, treat or manage diseases or conditions of the human eye, lid, adnexa or visual system or to adapt, fill duplicate, modify, prescribe or sell contact lenses or prescription eyeglasses."

Amendments. The 2009 amendment substituted "a physician" for "the patient's physician" in (16)(A)(ix)(a).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Professions, Occupations, and

Businesses, 24 U. Ark. Little Rock L. Rev. 535.

CASE NOTES

ANALYSIS

In General.
Duty of Care.
Duty to Warn.

In General.

A pharmacy is a medical care provider within the meaning of the Arkansas Medical Malpractice Act and the reference in the Medical Malpractice Act to a pharmacist should be deemed to include a phar-

macy. Kohl v. American Home Prods. Corp., 78 F. Supp. 2d 885 (W.D. Ark. 1999).

Duty of Care.

A pharmacy has a legal duty to exercise due care and diligence in the performance of its professional duties, however, this duty does not encompass a general duty to warn customers of potential drug side effects or to give advice on the efficacy of the drug absent the presence of some contraindication. Kohl v. American Home

Prods. Corp., 78 F. Supp. 2d 885 (W.D. Ark. 1999).

Duty to Warn.

The drug manufacturer may rely on the prescribing physician to warn the ultimate user of the risk of a prescription drug, and pharmacies generally have no common-law or statutory duty to warn

customers of the risks associated with the prescription drugs they purchase, unless there is evidence the pharmacy compounded the drug or changed the drug in some manner after receiving it from the manufacturer. *Kohl v. American Home Prods. Corp.*, 78 F. Supp. 2d 885 (W.D. Ark. 1999).

17-92-102. Exemptions.

(a) Nothing in this section and §§ 17-92-101(1)-(11), 17-92-103, 17-92-105, 17-92-205(b), 17-92-206(b), 17-92-303, 17-92-402, 17-92-404, 17-92-405, 17-92-409, 17-92-410, and 17-92-411(a) shall prevent the personal administration of drugs and medicines carried and kept for emergencies by licensed physicians, dentists, or veterinarians in order to supply the immediate needs of their patients while in their presence, nor shall it apply to physicians, dentists, or veterinarians compounding or dispensing their own prescriptions.

(b) The provisions of this section and §§ 17-92-101(1)-(11), 17-92-103, 17-92-105, 17-92-205(b), 17-92-206(b), 17-92-303, 17-92-402, 17-92-404, 17-92-405, 17-92-409, 17-92-410, and 17-92-411(a) shall not apply:

(1) To the sale of drugs and medicines when intended for agricultural, technical, and industrial use, unless those drugs and medicines are legend drugs as defined in § 20-64-503;

(2) To the sales by wholesale druggists, wholesale or retail grocers, or other wholesale or retail dealers or manufacturers of proprietary medicines in original packages; or

(3) To the sales of those drugs commonly known as "grocers' drugs" in original packages when put up under the direction of a licensed pharmacist of this or some other state.

(c) Further exempted from the provisions of this section and §§ 17-92-101(1)-(11), 17-92-103, 17-92-105, 17-92-205(b), 17-92-206(b), 17-92-303, 17-92-402, 17-92-404, 17-92-405, 17-92-409, 17-92-410, and 17-92-411(a) are the sale of legend drugs approved by the State Board of Optometry by licensed pharmacists to duly licensed optometrists and the possession and use of legend drugs by duly licensed optometrists as authorized by the board and by §§ 17-90-401 — 17-90-403.

(d) In the event a pharmacist receives a request for a prescription refill and the pharmacist is unable to obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a seventy-two-hour supply of the prescribed medication, provided that:

(1) The prescription is not for a medicinal drug listed in Schedule II as defined in § 5-64-205;

(2) The medication is essential to the maintenance of life or to the continuation of therapy;

(3) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;

(4) The pharmacist properly records the dispensing; and

(5) The dispensing pharmacist notifies the prescriber of the emergency dispensing within a reasonable time after the one-time emergency refill dispensing.

History. Acts 1929, No. 72, § 6; Pope's A.S.A. 1947, § 72-1020; Acts 1991, No. Dig., § 4627; Acts 1979, No. 710, § 2; 740, § 2.

17-92-103. Pharmacy laws unaffected.

This section and §§ 17-92-101(1)-(11), 17-92-102, 17-92-105, 17-92-205(b), 17-92-206(b), 17-92-303, 17-92-402, 17-92-404, 17-92-405, 17-92-409, 17-92-410, and 17-92-411(a) shall not be construed to repeal any portion of the pharmacy laws in force prior to June 12, 1929, unless they are in direct conflict with these sections.

History. Acts 1929, No. 72, § 16; A.S.A. 1947, § 72-1035.

17-92-104. Privilege tax unaffected.

Nothing in this act shall be construed to repeal or otherwise interfere with the collection of the privilege taxes now levied, or that may be levied, for state, county, or city purposes on the business of hawking, peddling, or street vending of goods, wares, and merchandise.

History. Acts 1891, No. 50, § 15, p. 80; 17-92-201, 17-92-202, 17-92-204, 17-92-C. & M. Dig., § 3681; Pope's Dig., § 4620; 303, 17-92-305, 17-92-306, 17-92-309, 17-A.S.A. 1947, § 72-1036. 92-312, 17-92-402, and 17-92-406 [re-

Meaning of "this act". Acts 1891, No. 50, codified as §§ 17-92-104, 17-92-107, repealed].

17-92-105. Prohibited acts — Penalties.

(a) Violation of any part of this section and §§ 17-92-101(1)-(11), 17-92-102, 17-92-103, 17-92-205(b), 17-92-206(b), 17-92-303, 17-92-402, 17-92-404, 17-92-405, 17-92-409, 17-92-410, and 17-92-411(a) not otherwise provided for shall be a violation and shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300).

(b) Each day of violation shall constitute a separate offense.

History. Acts 1929, No. 72, § 17; Pope's Dig., § 4637; A.S.A. 1947, § 72-1031; Acts 2005, No. 1994, § 88.

17-92-106. Injunctions.

The Arkansas State Board of Pharmacy, in its discretion and in addition to various remedies now provided by law, may apply to a court having competent jurisdiction over the parties and subject matter for a writ of injunction to restrain repetitious violations of the pharmacy laws of this state.

History. Acts 1955, No. 57, § 15; A.S.A. 1947, § 72-1039.

CASE NOTES**Criminal Prosecution.**

An injunction restraining defendants from the sale of condoms in vending machines was properly denied where it was

not shown that any of the defendants had been prosecuted criminally. *Arkansas State Bd. of Pharmacy v. Troilett*, 249 Ark. 1098, 463 S.W.2d 383 (1971).

17-92-107. Prosecutions — Disposition of fines.

(a)(1) All suits for the collection of any fine or penalty prescribed in this act may be instituted in any court having jurisdiction thereof by any citizen of the county wherein the fine or penalty is incurred.

(2) It shall be the duty of the prosecuting attorney of the county wherein the fine or penalty is incurred to prosecute all persons incurring them when notified by any citizen of the county.

(b)(1) Upon affidavit made before any justice of the peace by any citizen of the county showing a violation of this act, the justice of the peace shall issue his or her warrant as provided by law.

(2) However, the Arkansas State Board of Pharmacy or any member thereof, or its authorized agent, may institute and prosecute proceedings in any county in this state for violations of this act or for the collection of any fine or penalty prescribed in this act in any court having jurisdiction.

(c) All fines and penalties collected under the provisions of this act shall inure to the public school fund of the school district in which the offense was committed.

History. Acts 1891, No. 50, § 14, p. 80; 1903, No. 169, § 2, p. 326; 1915, No. 296, § 1; C. & M. Dig., § 3680; Pope's Dig., § 4619; A.S.A. 1947, § 72-1032.

Meaning of "this act". See note to § 17-92-104.

17-92-108. Fees.

(a) The fees charged by the Arkansas State Board of Pharmacy for the various examinations, permits, licenses, certificates, credentials, and books issued by the board shall be as follows:

(1) The fee for examination for a license as a licensed pharmacist upon examination shall not exceed twenty-five dollars (\$25.00) plus the actual cost of the examination;

(2) The fee for a license as a licensed pharmacist from another state by reciprocity and without examination shall not exceed two hundred dollars (\$200);

(3)(A) The fee for the initial license as a licensed pharmacist shall not exceed seventy-five dollars (\$75.00).

(B) The fee for the renewal of a license as a licensed pharmacist shall not exceed seventy-five dollars (\$75.00) per year;

(4)(A)(i) The fee for issuance of a pharmacy permit for the first time to operate an in-state pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate an in-state pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in an in-state pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(B)(i) The fee for issuance of a permit for the first time to operate a specialty pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate a specialty pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in a specialty pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(C)(i) The fee for issuance of a permit for the first time to operate an out-of-state pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate an out-of-state pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in an out-of-state pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(5) The fee for a certificate as a licensed pharmacist shall not exceed ten dollars (\$10.00);

(6) The fee for certifying grades in connection with an application for reciprocity licensure without an examination shall not exceed ten dollars (\$10.00);

(7)(A) The fee for issuance of a hospital pharmaceutical service permit shall not exceed three hundred dollars (\$300), and the fee for the renewal of a hospital pharmaceutical service permit shall not exceed one hundred fifty dollars (\$150) per year.

(B) When there is a change in ownership of a hospital pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(C)(i) The fee for issuance of an ambulatory care center pharmaceutical service permit shall not exceed three hundred dollars (\$300), and the fee for the renewal of an ambulatory care center pharmaceutical service permit shall not exceed one hundred fifty dollars (\$150) per year.

(ii) When there is a change in ownership of an ambulatory care center pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(8)(A) The fee for issuance of an institutional pharmaceutical services permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the annual renewal of an institutional pharmaceutical services permit shall not exceed thirty-five dollars (\$35.00);

(9)(A) The fee for issuance of and the reinstatement of a nursing home consultant pharmacist permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the renewal of a nursing home consultant pharmacist permit shall not exceed thirty-five dollars (\$35.00) per year;

(10)(A) The fee for intern registration shall not exceed forty-five dollars (\$45.00).

(B) The fee for preceptor registration shall not exceed twenty dollars (\$20.00) every two (2) years;

(11) The fee for a change of pharmacist in charge of a pharmacy or other facility as described at § 17-92-403 shall not exceed thirty-five dollars (\$35.00);

(12) The fee for reinstatement of a pharmacist licensure shall not exceed seventy-five dollars (\$75.00) for each delinquent year up to a maximum of three hundred dollars (\$300);

(13) The fee for the Arkansas State Board of Pharmacy law book shall not exceed twenty-five dollars (\$25.00) except to interns on initial licensure and applicants for reciprocity on a one-time basis. A copy of each edition as revised shall be provided free to each pharmacy permit holder;

(14) The fee for a change of location inspection shall not exceed one hundred dollars (\$100);

(15) The penalty for late payment of renewal of any permit, license, registration, or certificate shall not exceed twenty dollars (\$20.00) per month beginning the first day of the second month after expiration, provided that if the renewal is not paid by the first day of the fourth month after expiration, the license shall be void;

(16)(A) The fee for issuance of a wholesale distributor of legend drugs and controlled substances permit shall not exceed three hundred dollars (\$300), and the renewal fee shall not exceed one hundred fifty dollars (\$150) per year.

(B) When there is a change in ownership of a wholesale distributor of legend drugs and controlled substances, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(17)(A) The fee for the original issuance of a pharmacy technician's permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the renewal of a pharmacy technician's permit shall not exceed thirty-five dollars (\$35.00) per year.

(C) The board may waive the fees under subdivisions (a)(17)(A) and (B) of this section if the pharmacy technician performs pharmacy technician duties as a volunteer in a charitable clinic;

(18)(A) The reinstatement fee for a pharmacy technician's permit shall not exceed forty dollars (\$40.00).

(B) The board may waive the fee under subdivision (a)(18)(A) of this section if the pharmacy technician performs pharmacy technician duties as a volunteer in a charitable clinic; and

(19)(A) The application fee for a license to sell, rent, offer to sell, or rent directly to patients in this state any home medical equipment, legend drugs, or medical gases shall not exceed two hundred fifty dollars (\$250).

(B) The license renewal fee shall not exceed one hundred twenty-five dollars (\$125).

(C) The change-of-ownership fee shall not exceed one hundred twenty-five dollars (\$125).

(b) All fees for examination for a license shall be payable with the application and shall not be subject to refund.

(c) Should any license, certificate, or registration not be renewed within ninety (90) days after expiration thereof, it may be reinstated by the board as authorized in this section upon payment of the renewal fee and reinstatement fee. However, the following are not subject to reinstatement if not renewed within ninety (90) days after expiration:

(1) Pharmacy permits;

(2) Out-of-state pharmacy permits;

(3) Speciality pharmacy permits;

(4) Hospital permits;

(5) Ambulatory care center pharmacy permits;

(6) Wholesale distributors of legend drugs or controlled substance permits, or both; and

(7) Suppliers of medical equipment, legend devices, and medical gas licenses.

(d)(1) All retail pharmacy permits, out-of-state pharmacy permits, specialty pharmacy permits, and pharmacist licenses shall be renewed every two (2) years beginning with renewals for 2002-2003.

(2) All pharmacy technician permits, hospital pharmacy permits, ambulatory care center pharmaceutical services permits, wholesale distributors of legend or controlled substance permits, wholesale distributors of medical equipment, legend devices, and medical gases permits, institutional pharmaceutical services permits, nursing home consultant pharmacist permits, and any other permit, license, registration, or certificate issued by the board and not covered in subdivision (d)(1) of this section other than internship licenses and preceptor permits will be renewed for one (1) year for the 2002 renewal and then shall be renewed every two (2) years beginning with renewals for 2003-2004.

(3) The fee for any biennial renewal term will be the amount of two (2) annual renewal fees for the applicable license, permit, registration, or certification as provided in subsection (a) of this section.

(4) If the initial licensure, permit, certificate, or registration occurs in the first year of a biennial renewal term, the applicant shall pay the

appropriate initial fee and the applicable annual fee for the license, permit, certificate, or registration for the second year in the renewal term as provided in subsection (a) of this section.

(5) If the initial licensure, permit, certificate, or registration occurs in the second year of a biennial renewal term, the applicant will pay only the original fee and will not be responsible for the renewal fee until the biennial renewal period for the license, permit, certificate, or registration.

History. Acts 1965, No. 480, §§ 1, 2; 1975, No. 597, § 1; 1979, No. 751, § 1; 1983, No. 511, § 10; 1985, No. 616, § 3; A.S.A. 1947, §§ 72-1042, 72-1043; Acts 1991, No. 740, § 3; 1997, No. 1029, § 1; 1999, No. 105, § 6; 2001, No. 910, § 2; 2005, No. 388, § 1; 2007, No. 435, § 1; 2009, No. 355, § 2.

Amendments. The 2007 amendment added (a)(17)(C); added the (a)(18)(A) designation; added (a)(18)(B); and made punctuation changes.

The 2009 amendment rewrote (a)(10).

17-92-109. Prescriptions for optometrists.

Pharmacists duly licensed in the State of Arkansas are authorized to fill prescriptions in the State of Arkansas for duly licensed optometrists thereof for pharmaceutical agents to be possessed, administered, or prescribed by the optometrists pursuant to the provisions of § 17-90-101 et seq.

History. Acts 1987, No. 101, § 4; 1997, No. 437, § 3.

17-92-110. Prescriptive authority of advanced practice nurses.

Pharmacists licensed in the State of Arkansas are authorized to fill prescriptions in the State of Arkansas for advanced practice nurses holding certificates of prescriptive authority.

History. Acts 1995, No. 409, § 20.

nurses, § 17-87-302.

Cross References. Advanced practice

Prescriptive authority, § 17-87-310

17-92-111. Construction of Acts 1997, No. 1204.

Nothing in this act shall be construed to authorize or permit any licensed or registered pharmacist to examine, diagnose, treat, or manage diseases or conditions of the human eye, lid, adnexa, or visual system or to adapt, fill duplicate, modify, prescribe, or sell contact lenses or prescription eyeglasses.

History. Acts 1997, No. 1204, § 5.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-6 may not apply to this section which was enacted subsequently.

Meaning of “this act”. Acts 1997, No. 1204, codified as §§ 17-92-101(13), (16)(A)(i), (16)(A)(ix), (16)(A)(x), (16)(C)(i), and (22); 17-92-111; 17-92-205(a); and 17-92-209.

17-92-112. Prescriptions for physician assistants.

(a) Pharmacists licensed in the State of Arkansas are hereby authorized to fill prescriptions in the State of Arkansas for licensed physician assistants for Schedule III—V controlled substances as described in the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, and 21 C.F.R. Part 1300.

(b) Physician assistant-generated prescriptions for controlled substances must have the physician assistant's name and Drug Enforcement Administration number and the supervising physician's name communicated either verbally, in writing, or by electronic means. Controlled substances, prescription medications, and products dispensed by a licensed pharmacist to a patient per a physician assistant-generated prescription shall state on the labeling prepared by the pharmacist the physician assistant's name and "PA" behind the physician assistant's name. Pharmacists shall carry out the physician assistant's prescriptive request or order in the same manner as they would for the physician assistant's supervising physician. All prescriptions and orders issued by a physician assistant shall also identify his or her supervising physician.

History. Acts 1999, No. 851, § 24.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF PHARMACY

SECTION.

- 17-92-201. Members — Qualifications.
- 17-92-202. Members — Oath.
- 17-92-203. Members — Compensation.
- 17-92-204. Organization and proceedings.
- 17-92-205. Rules and regulations — Enforcement.

SECTION.

- 17-92-206. Issuance of bulletins — Annual report.
- 17-92-207. Maintenance of office.
- 17-92-208. Employees.
- 17-92-209. Medications Administration Advisory Committee.

Cross References. Board members not to be held personally liable for actions as board members, § 17-80-103.

Preambles. Acts 1891, No. 50 contained a preamble which read: "Whereas, in all civilized countries it has been found necessary to regulate the traffic in medicines and poisons and to provide by law for the regulation of the delicate and responsible business of compounding and dispensing the powerful agents used in medicines; and

"Whereas, the safety and welfare of the public are endangered by the sale of poisons by unqualified and ignorant persons; and

"Whereas, the power of physicians to overcome disease depends greatly upon

their ability to procure good, unadulterated drugs and skillfully prepared medicines; and

"Whereas, the sophistication and adulteration of drugs and medicines is a specious fraud which should be prevented and suitably punished;

"Therefore...."

Acts 1955, No. 57 contained a preamble which read: "Whereas, the present laws governing the compounding and dispensing of drugs are inadequate, in that the present law allows unlicensed persons to practice under the supervision of registered pharmacists; and

"Whereas, the present law must be modified and adequate provision made to safeguard the health of the people of the

State of Arkansas by insuring that only qualified people are allowed to compound and dispense drugs;

"Now, therefore...."

Effective Dates. Acts 1891, No. 50, § 17: effective on passage.

Acts 1921, No. 535, § 5: approved Mar. 26, 1921. Emergency clause provided: "This act being necessary for the immediate preservation of the public health and security, an emergency is hereby declared, and this act shall be in force and effect from and after its passage."

Acts 1929, No. 72, § 18: effective on passage.

Acts 1957, No. 230, § 4: Mar. 12, 1957. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that great need exists in the State Board of Pharmacy for fixing the number of officials and employees of said board and to provide for the payment of their salaries and expenses, and that enactment of this bill will remedy this need. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval."

Acts 1965 (1st Ex. Sess.), No. 26, § 3: June 7, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maximum number of employees established for the State Board of Pharmacy and the maximum salaries prescribed for such employees by Acts 1957, No. 230, § 1, are inadequate for the proper maintenance and operation of said board and that it is essential to the protection of the public health and safety of the citizens of this state that the maximum number of employees and the maximum salaries provided herein be put into effect immediately in order that the State Board of Pharmacy can properly and efficiently carry out the functions and duties of said board as prescribed by law. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1967, No. 191, § 3: emergency clause failed to pass.

Acts 1977, No. 55, § 8: July 1, 1977. Emergency clause provided: "It is hereby

found and determined by the Seventy-First General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this act are provided; and that, in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and

this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 1163, § 5: Apr. 10, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is essential that the Arkansas State Pharmacy Board consist of members who are representative of the major population elements of this state; that the current laws governing the membership of the Arkansas State Pharmacy Board contain no provision to assure that at least one member of the board be representative of the minority pharmacists in the state; that the Arkansas Medical, Dental and Pharmaceutical Association is a long standing organization of minority professionals in the state and that it is appropriate that the membership of the State Board of Pharmacy be increased to include one member appointed by the Governor from nominees submitted by that organization; that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends

various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 1092, § 4: Apr. 4, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the new phases of the federal Health Insurance Portability and Accountability Act of 1996 go into effect April 14, 2003, that the continuing operation of pharmacies throughout the state may be disrupted and that the health and safety of citizens of Arkansas may be at risk if this act does not become effective before April 14, 2003. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

17-92-201. Members — Qualifications.

(a) The Arkansas State Board of Pharmacy shall consist of eight (8) members, appointed by the Governor for terms of six (6) years:

(1) Five (5) members shall be experienced pharmacists who shall have been actively engaged in the drug business for the last five (5) years immediately preceding their appointments;

(2) One (1) member shall be a minority who is a licensed practicing pharmacist in this state, to be appointed by the Governor upon the advice and recommendation of the Pharmaceutical Section of the Arkansas Medical, Dental, and Pharmaceutical Association; and

(3)(A) Two (2) members of the board shall not be actively engaged in or retired from the practice of pharmacy. One (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly. Both shall be appointed from the state at large, subject to confirmation by the Senate. Both shall be full voting members but shall not participate in the grading of examinations.

(B) The two (2) positions may not be held by the same person.

(b) A member shall hold his or her office until his or her successor shall have been appointed and qualified.

(c)(1) In case of a vacancy from death or other cause, the Governor shall appoint a successor with qualifications as set forth in subsection (a) of this section.

(2) In the event that a vacancy exists in the minority position due to death, resignation, or other cause, a successor member to the position shall be appointed by the Governor for the remainder of the unexpired portion of the term in the same manner as is provided for the initial appointment.

(d) In order to appropriately stagger the terms of the pharmacist members, the term of the minority pharmacist member serving on January 1, 1999, is extended to eight (8) years. Thereafter, the term of the minority pharmacist member shall be six (6) years.

History. Acts 1891, No. 50, § 2, p. 80; C. & M. Dig., § 3668; Pope's Dig., § 4604; Acts 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-1002; Acts 1991, No. 1163, § 1; 1997, No. 942, § 1; 1999, No. 105, § 7.

A.C.R.C. Notes. As enacted, former subdivision (d)(1)(A) provided that the additional member of the Arkansas State Board of Pharmacy be appointed "from and after the effective date of this act." Acts 1991, No. 1163 was effective upon passage and approval and was signed by the governor on April 10, 1991.

Acts 1997, No. 942, § 2, provided: "(a) The terms of the members of the State Board of Pharmacy serving on the effective date of this Act, shall be extended to six (6) years except as provided in this

section.

"(b) In order to appropriately stagger the new terms of the pharmacist members, the term of the minority pharmacist member that is in effect on the effective date of this act shall be extended to seven (7) years. Thereafter, the term of the minority pharmacist member shall be six (6) years."

Publisher's Notes. The terms of the members of the Arkansas State Board of Pharmacy, other than the representatives of consumers and the elderly, are arranged so that one term expires every year.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113, full voting authority as board members.

CASE NOTES

Cited: *Hosto v. Brickell*, 265 Ark. 147, 577 S.W.2d 401 (1979).

17-92-202. Members — Oath.

Before entering upon the duties of the office, the members of the Arkansas State Board of Pharmacy shall take the oath prescribed by the Constitution for state officers and shall file it in the office of the Secretary of State, who shall thereupon issue to each of the board members a certificate of appointment.

History. Acts 1891, No. 50, § 3, p. 80; C. & M. Dig., § 3669; Pope’s Dig., § 4605; A.S.A. 1947, § 72-1003.

17-92-203. Members — Compensation.

Members of the Arkansas State Board of Pharmacy may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1957, No. 230, § 3; 1979, 1947, § 72-1002.3; Acts 1991, No. 740, No. 751, § 2; 1983, No. 511, § 4; A.S.A. § 4; 1997, No. 250, § 164.

17-92-204. Organization and proceedings.

(a) Immediately after the appointment and qualification of the Arkansas State Board of Pharmacy, the members shall meet and organize as the Arkansas State Board of Pharmacy, by electing from their own number a president and secretary.

(b)(1) The board shall hold not fewer than two (2) regular meetings per annum for the examination of candidates.

(2) One (1) meeting may be held at the time and place of the annual meeting of the Arkansas Pharmacists Association. The other meeting shall be held at a time and place as the board may determine.

(3) Other meetings of the board may also be held whenever and wherever a quorum of the board, including the secretary, is present.

(c) A majority of the board shall be a quorum for the transaction of any business.

(d) The board may adopt such bylaws as it deems necessary to carry into execution the provisions of this act without expense to the state.

History. Acts 1891, No. 50, §§ 4, 5, p. 80; C. & M. Dig., §§ 3670, 3671; Pope’s Dig., §§ 4606, 4607; A.S.A. 1947, §§ 72-1004, 72-1005. 50, codified as §§ 17-92-104, 17-92-107, 17-92-201, 17-92-202, 17-92-204, 17-92-303, 17-92-305, 17-92-306, 17-92-309, 17-92-312, 17-92-402, and 17-92-406 [repealed].

Meaning of “this act”. Acts 1891, No.

17-92-205. Rules and regulations — Enforcement.

(a)(1) The Arkansas State Board of Pharmacy shall have authority to make reasonable rules and regulations, not inconsistent with law, to carry out the purposes and intentions of this chapter and the pharmacy laws of this state that the board deems necessary to preserve and protect the public health.

(2) The board shall by regulation establish standards for the administration of medications by licensed pharmacists, including, but not limited to, the completion of a course in the administration of medications.

(b) It shall be the duty of the board, through officials appointed by it or under its supervision for that purpose, to enforce all the provisions of this chapter.

(c)(1) Upon written authorization by the board, the board's inspectors or other designated agents shall have authority to conduct oversight activities authorized by law, including, but not limited to, audits, investigations, inspections, licensure, or disciplinary actions, civil, administrative, or criminal proceedings or actions, or other activities necessary for appropriate oversight of the regulated activities and may enter any store, business establishment, including any hospital pharmacy, or any other facility holding a license, permit, or other authority issued by the board where drugs, medicines, chemicals, pharmaceuticals, poisons, home medical equipment, or services or other objects, services, or activities regulated by the board are manufactured, sold, dispensed, or conducted to enforce this chapter, the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, § 5-64-1001 et seq., § 5-64-1101 et seq., the Food, Drug, and Cosmetic Act, § 20-56-201 et seq., or § 20-64-501 et seq.

(2)(A) Upon written authorization by the board, the board's inspectors and other designated agents may obtain copies of any document, prescription, drug order, or other record or physical object relevant to the board's oversight of the regulated activity.

(B)(i) With regard to hospital pharmacies, the board's inspectors and other designated agents may also view and at the board's expense make copies of identifiable records relating to patients in patient areas of the hospital if the records are relevant to an activity regulated by the board.

(ii) However, should any such record be in active use or storage at the time of the board's request to examine, obtain, or copy the record, the entity having control or possession of the record shall state in writing that the record will be made available to the board at a specific date and time within two (2) working days after the board's request.

(C) For purposes of confidentiality, a record containing patient health information in the possession of the board under this subdivision (c)(2) shall be considered a medical record for purposes of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(3) In any investigation or official inquiry of a potential violation of law or any administrative proceeding regarding an alleged violation of law subject to its jurisdiction, the board may issue subpoenas signed by its executive director or the director's designee for any document, prescription, drug order, or other record or physical object identified or otherwise described in the subpoena if the item is relevant and material to the inquiry, investigation, or proceeding.

(4) In any administrative proceeding arising from an alleged violation of law within its jurisdiction, the board may order the disclosure of any information that is relevant and material to the alleged violation.

(5)(A) If a person has been served with a subpoena or subpoena duces tecum or has been ordered to disclose information in an administrative proceeding under this chapter and fails to comply with the order, the board may apply to the Pulaski County Circuit Court or to the circuit court of the county in which the board is conducting its investigation or hearing for an order directing that:

- (i) The person be brought before the court; and
- (ii) After notice and opportunity for a hearing, the person comply with the order.

(B) If the person violates the court’s order, the court may punish the person for civil contempt.

(C) If a person fails or refuses to make available to the board’s inspectors or agents under subdivision (c)(2) of this section any document, prescription, drug order, or other record or physical object, the board may file an action in the Pulaski County Circuit Court or in the circuit court of the county in which the board is conducting its oversight activity to obtain an order, after notice and opportunity for hearing, mandating that the person make the document, prescription, drug order, or other record or physical object available to the board’s representatives.

History. Acts 1929, No. 72, § 14; Pope’s Dig., § 4635; Acts 1955, No. 57, § 19; A.S.A. 1947, §§ 72-1004.1, 72-1033; Acts 1991, No. 740, § 5; 1997, No. 1204, § 3; 1999, No. 644, § 1; 2003, No. 1092, § 2; 2005, No. 388, § 2; 2005, No. 1962, § 75.

A.C.R.C. Notes. Acts 1997, No. 1204, § 5, codified as § 17-92-111, provided: “Nothing in this act shall be construed to authorize or permit any licensed or regis-

tered pharmacist to examine, diagnose, treat or manage diseases or conditions of the human eye, lid, adnexa or visual system or to adapt, fill duplicate, modify, prescribe or sell contact lenses or prescription eyeglasses.”

Publisher’s Notes. The 1999 amendment originally designated this section § 20-92-205(c); the A.C.R.C. redesignated it as § 17-92-205(c).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Busi-

nesses, Pharmacy Practice Act, 26 U. Ark. Little Rock L. Rev. 452.

CASE NOTES

Validity of Regulations.

A regulation of the board permitting it to consider public need and convenience in the particular location in issuing or refusing a registered (now licensed) pharmacy permit was invalid as beyond the power of

the board. *Arkansas State Bd. of Pharmacy v. Hall*, 243 Ark. 741, 421 S.W.2d 888 (1967).

Cited: *Hosto v. Brickell*, 265 Ark. 147, 577 S.W.2d 401 (1979).

17-92-206. Issuance of bulletins — Annual report.

(a) It shall be the duty of the Arkansas State Board of Pharmacy to issue bulletins from time to time, informing pharmacists of important United States public health regulations, service and regulatory announcements of the Bureau of Chemistry and Soils in the United States Department of Agriculture, and decisions of the United States Department of Treasury relating to the possession, use, and sale of nonbeverage United States Pharmacopoeia alcohol and to the Harrison-Wright Antinarcotic Act.

(b) The board shall make a written report on September 1 of each year to the Governor and to the Arkansas Pharmacists Association of all its proceedings, orders, rules, requirements, and regulations, of its receipts and disbursements, including also the names of all persons licensed to practice under this chapter, and a record of permits and renewals.

History. Acts 1921, No. 535, § 4; 1929, No. 72, § 14; Pope's Dig., §§ 4622, 4635; A.S.A. 1947, §§ 72-1011, 72-1033; Acts 1991, No. 740, § 6; 2009, No. 355, § 3.

Amendments. The 2009 amendment substituted "September 1" for "July 1" in (b).

U.S. Code. The reference to the Harrison-Wright Antinarcotic Act is apparently erroneous. The reference may have been intended to refer to the Harrison Acts which are no longer codified but were codified in the 1939 Internal Revenue Code.

CASE NOTES

Cited: *Hosto v. Brickell*, 265 Ark. 147, 577 S.W.2d 401 (1979).

17-92-207. Maintenance of office.

The Arkansas State Board of Pharmacy shall have the authority to maintain an office, purchase supplies, etc., for the advancement of pharmacy as may in its judgment be deemed necessary to carry out the purposes of this chapter and to enforce the pharmacy laws of this state.

History. Acts 1955, No. 57, § 18; A.S.A. 1947, § 72-1005.1.

17-92-208. Employees.

(a) The Arkansas State Board of Pharmacy is authorized to make payment for services, salaries, and other purposes from the funds received by the board from issuance of licensed pharmacy permits, renewals, or certificates of licensure of licensed pharmacists, examinations, reciprocity fees, and from other moneys collected.

(b)(1) The board is authorized to employ an attorney to supervise and conduct its investigations and to institute and prosecute actions and charges for the violation of the provisions of the Arkansas Pharmacy Act, § 17-92-101 et seq.

(2) The board may pay to the attorney a sum not to exceed three hundred sixty-six dollars and sixty-five cents (\$366.65) per month from its general operation funds.

(3) The attorney employed or retained by the board shall make regular reports to the Attorney General of the actions instituted or prosecuted by him or her.

(4) Appeals from the circuit court to the Supreme Court in matters affecting the action of the board shall be handled by the office of the Attorney General.

(5) The attorney so employed shall not be considered a state employee and shall not be entitled to any of the benefits of retirement, insurance, workers' compensation, or other perquisites enjoyed by state employees.

(c) The board is authorized to make reimbursement of the necessary and reasonable travel, board, and lodging expenses of the staff of the board incurred in the performance of their duties.

History. Acts 1957, No. 230, §§ 1-3; 191, § 1; 1977, No. 55, § 4; 1983, No. 511, 1965 (1st Ex. Sess.), No. 26, § 1; 1967, No. § 3; A.S.A. 1947, §§ 72-1002.1, 72-1002.2.

17-92-209. Medications Administration Advisory Committee.

(a)(1) The Medications Administration Advisory Committee is created as an advisory committee to the Arkansas State Board of Pharmacy.

(2) The committee shall assist the Arkansas State Board of Pharmacy in implementing the provisions of this chapter regarding medications administration and shall recommend additional classifications of medications which may be administered by licensed pharmacists. The Arkansas State Board of Pharmacy shall by regulation review and approve the recommendations of the committee.

(b) The Arkansas State Board of Pharmacy shall appoint five (5) members, to be approved by the Governor, who have the following qualifications:

(1) Two (2) members shall be licensed physicians selected from a list of three (3) names per position submitted jointly by the Arkansas State Medical Board and the Arkansas Medical Society;

(2) Two (2) members shall be licensed pharmacists; and

(3) One (1) member shall be an advanced practice nurse holding a certificate of prescriptive authority selected from a list of three (3) names submitted jointly by the State Nursing Board and the Arkansas Nursing Association.

(c) Members shall serve three-year terms.

(d) The Arkansas State Board of Pharmacy may remove any committee member, after notice and hearing, for incapacity, incompetence, neglect of duty, or malfeasance in office.

(e) The members shall serve without compensation but may be reimbursed to the extent special moneys are appropriated therefor for

actual and necessary expenses incurred in the performance of their duties.

History. Acts 1997, No. 1204, § 4.

A.C.R.C. Notes. Acts 1997, No. 1204, § 5, codified as § 17-92-111, provided: "Nothing in this act shall be construed to authorize or permit any licensed or registered pharmacist to examine, diagnose,

treat or manage diseases or conditions of the human eye, lid, adnexa or visual system or to adapt, fill duplicate, modify, prescribe or sell contact lenses or prescription eyeglasses."

SUBCHAPTER 3 — LICENSED PHARMACISTS

SECTION.

- 17-92-301. License required.
- 17-92-302. Unlicensed practice — Penalty.
- 17-92-303. Unlawful use of professional title — Penalty.
- 17-92-304. Board administration — Support services.
- 17-92-305. Application — Qualification of applicants.
- 17-92-306. Examinations.
- 17-92-307. Internship required.
- 17-92-308. Reciprocity.
- 17-92-309. Registration and certificate.

SECTION.

- 17-92-310. Failure to renew.
- 17-92-311. Revocation, suspension, or nonrenewal — Grounds.
- 17-92-312. Revocation and fine — Adulteration of drugs.
- 17-92-313. Revocation — Procedure.
- 17-92-314. Revocation — Appeals.
- 17-92-315. Alternative penalties.
- 17-92-316. Credential required for professional pharmacy service.
- 17-92-317. Criminal background check.

Cross References. Continuing education requirements, § 17-80-104.

Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Preambles. Acts 1891, No. 50 contained a preamble which read: "Whereas, in all civilized countries it has been found necessary to regulate the traffic in medicines and poisons and to provide by law for the regulation of the delicate and responsible business of compounding and dispensing the powerful agents used in medicines; and

"Whereas, the safety and welfare of the public are endangered by the sale of poisons by unqualified and ignorant persons; and

"Whereas, the power of physicians to overcome disease depends greatly upon their ability to procure good, unadulterated drugs and skillfully prepared medicines; and

"Whereas, the sophistication and adulteration of drugs and medicines is a specious fraud which should be prevented and suitably punished;

"Therefore...."

Acts 1955, No. 57 contained a preamble which read: "Whereas, the present laws governing the compounding and dispensing of drugs are inadequate, in that the present law allows unlicensed persons to practice under the supervision of registered pharmacists; and

"Whereas, the present law must be modified and adequate provision made to safeguard the health of the people of the State of Arkansas by insuring that only qualified people are allowed to compound and dispense drugs;

"Now, therefore...."

Effective Dates. Acts 1891, No. 50, § 17: effective on passage.

Acts 1921, No. 535, § 5: approved Mar. 26, 1921. Emergency clause provided: "This act being necessary for the immediate preservation of the public health and security, an emergency is hereby declared, and this act shall be in force and effect from and after its passage."

Acts 1929, No. 72, § 18: effective on passage.

Acts 1965, No. 480, § 4: approved Mar. 20, 1965. Emergency clause provided: "It is hereby found and determined by the

General Assembly that the Arkansas State Board of Pharmacy has insufficient funds for the proper performance of the functions and duties of said board, which include the supervision and control of the compounding and dispensing of dangerous drugs and narcotics within this state, and that the immediate passage of this act is necessary to provide adequate funds for the efficient performance of the duties of the Pharmacy Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage."

Acts 1971, No. 26, § 5: Feb. 7, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate need for the establishment of an internship program in the practice of pharmacy in the State of Arkansas and a clarification of the definition of the practice of pharmacy and that medical clinics for the poor are in need of immediate pharmaceutical services. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1975, No. 597, § 2: approved Mar. 28, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas State Board of Pharmacy has insufficient funds for the proper performance of the functions and duties of said board, which include the supervision and control of the compounding and dispensing of dangerous drugs and narcotics within this state, and that the immediate passage of this act is necessary to provide adequate funds for the efficient performance of the duties of the Pharmacy Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate

preservation of the public peace, health, and safety shall be in full force and effect from and after its passage."

Acts 1993, No. 769, § 11: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 2003, No. 1092, § 4: Apr. 4, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the new phases of the federal Health Insurance Portability and Accountability Act of 1996 go into effect April 14, 2003, that the continuing operation of pharmacies throughout the state may be disrupted and that the health and safety of citizens of Arkansas may be at risk if this act does not become effective before April 14, 2003. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Rev. Case Notes — Equity — Injunctions — Unlicensed Practice of a Profession, 11 Ark. L. Rev. 177.

17-92-301. License required.

(a) No person shall perform any of the acts constituting the practice of pharmacy unless the person is:

- (1) A licensed pharmacist;
- (2) A student or graduate of a recognized college of pharmacy serving an internship under an internship program established and regulated by the Arkansas State Board of Pharmacy;
- (3) A pharmacy technician performing the limited functions permitted under this chapter and regulations promulgated hereunder; or
- (4) A hospital pharmacy technician as defined in § 17-92-602 performing the limited functions permitted under that subchapter and regulations promulgated thereunder.

(b) No person other than a licensed pharmacist shall use the term “doctor of pharmacy” or “Pharm.D”.

History. Acts 1971, No. 26, § 2; 1983, Acts 1991, No. 740, § 7; 1993, No. 769, No. 511, § 14; A.S.A. 1947, § 72-1045; § 4; 1999, No. 105, § 12.

17-92-302. Unlicensed practice — Penalty.

(a) No person shall fill a prescription, compound medicines, or otherwise perform the function of a licensed pharmacist unless the person is:

- (1) An Arkansas-licensed pharmacist, except students or graduates of a recognized college of pharmacy serving internship as provided by law and regulated by the Arkansas State Board of Pharmacy;
- (2) A pharmacy technician performing the limited functions permitted under this chapter and regulations promulgated hereunder; or
- (3) A hospital pharmacy technician as defined in § 17-92-602 performing the limited functions permitted under that subchapter and regulations promulgated thereunder.

(b) Any person who is not an Arkansas-licensed pharmacist or a student serving internship or a pharmacy technician performing the limited functions permitted under this chapter and regulations promulgated hereunder or a hospital pharmacy technician as defined in § 17-92-602 performing the limited functions permitted under that subchapter and regulations promulgated thereunder, who shall fill a prescription, compound or dispense medicine, or otherwise perform the functions of a pharmacist, shall be guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) for the first offense and not less than one hundred dollars (\$100) or thirty (30) days' imprisonment, or both fine and imprisonment, for each succeeding offense thereafter.

(c) Each day that the person shall fill prescriptions, compound or dispense medicines, or otherwise perform the functions of a pharmacist shall constitute a separate offense.

(d) Any licensed pharmacist who shall aid, abet, or encourage any person to violate the provisions of this section shall have his or her

license or permit revoked or suspended, within the discretion of the board.

History. Acts 1955, No. 57, § 12; A.S.A. 1947, § 72-1011.8; Acts 1991, No. 740, § 8; 1999, No. 105, §§ 13, 14.

CASE NOTES

Labeling.

Mere labeling of empty drug container did not constitute unlicensed practice of

pharmacy. Arkansas State Bd. of Pharmacy v. Wayne, 248 Ark. 934, 454 S.W.2d 667 (1970).

17-92-303. Unlawful use of professional title — Penalty.

Any person who shall take, use, or exhibit the title of licensed pharmacist, unless it has been regularly conferred upon him or her as set forth in §§ 17-92-306 and 17-92-309, shall be guilty of a violation and upon conviction shall be liable to a penalty of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100).

History. Acts 1891, No. 50, § 11, p. 80; § 3; Pope's Dig., § 4613; A.S.A. 1947, C. & M. Dig., § 3677; Acts 1929, No. 72, § 72-1015; Acts 2005, No. 1994, § 89.

17-92-304. Board administration — Support services.

(a) The Arkansas State Board of Pharmacy shall be fully advised respecting the eligibility and qualifications of all persons whom the board admits to the examination and to whom the board grants licensure.

(b) For this purpose the board shall secure the services of the National Association of Boards of Pharmacy and the Arkansas Pharmacists Association and shall pay for such service as the board may determine, but not to exceed one dollar (\$1.00) of each renewal fee annually paid.

History. Acts 1921, No. 535, § 4; Pope's Dig., § 4622; A.S.A. 1947, § 72-1011.

17-92-305. Application — Qualification of applicants.

(a) Each applicant for examination as a pharmacist:

- (1) Shall be not less than twenty-one (21) years of age;
- (2) Shall be of good moral character and temperate habits; and
- (3) Shall have:

(A) Graduated and received the first professional undergraduate degree from a pharmacy degree program which has been approved by the Arkansas State Board of Pharmacy; or

(B) Graduated from a foreign college of pharmacy, completed a transcript verification program, taken and passed a college of pharmacy equivalency exam program, and completed a process of communication ability testing as defined under board regulations so that

it is assured that the applicant meets standards necessary to protect public health and safety.

(b) Each application for examination shall be made on a form to be supplied by the board and shall be filed with the board as required by board regulations.

(c) Each application shall be accompanied by the cost of the examination plus the examination fee and certificate fee prescribed by § 17-92-108.

(d) The examination shall be given at a time and place and in a manner set by the board.

History. Acts 1891, No. 50, § 8, p. 80; A.S.A. 1947, §§ 72-1007.1, 72-1008; Acts C. & M. Dig., § 3674; Pope's Dig., § 4610; 1991, No. 740, § 9; 1997, No. 1029, § 2. Acts 1955, No. 57, § 1; 1983, No. 511, § 5;

CASE NOTES

Cited: Harvey v. Peters, 237 Ark. 687, 375 S.W.2d 654 (1964).

17-92-306. Examinations.

Upon application and at such time and place and in such manner as it may determine, the Arkansas State Board of Pharmacy shall examine or provide for examination every person who shall desire to practice pharmacy as described in §§ 17-92-101 and 17-92-402 in the State of Arkansas.

History. Acts 1891, No. 50, § 7, p. 80; A.S.A. 1947, § 72-1007; Acts 1991, No. C. & M. Dig., § 3673; Pope's Dig., § 4609; 740, § 10.

17-92-307. Internship required.

(a)(1) Every applicant for licensure must have experience and internship in a retail pharmacy under a licensed pharmacist, approved by the Arkansas State Board of Pharmacy, before and after graduation and examination as the board shall deem necessary to maintain and preserve the reciprocal agreements with other states and territories.

(2) The experience and internship in a retail pharmacy under a licensed pharmacist shall be predominantly related to the selling of drugs and medical supplies, compounding prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under the state and federal statutes.

(b) The board is directed and empowered to establish an internship program whereby students and graduates of a recognized college of pharmacy may be permitted to practice pharmacy under the direction and control of a licensed pharmacist.

History. Acts 1955, No. 57, § 2; 1971, No. 26, § 2; 1983, No. 511, § 14; A.S.A. 1947, §§ 72-1007.2, 72-1045.

17-92-308. Reciprocity.

(a) The Arkansas State Board of Pharmacy, in its discretion, may license as a pharmacist, through the process of reciprocity as established by the National Association of Boards of Pharmacy, any person who is duly licensed in some other state, territory, or the District of Columbia if the territory, state, or the District of Columbia has the same general requirements for licensure as Arkansas at the time of original licensure, provided that the state, territory, or the District of Columbia in which the person is licensed shall, under like conditions, grant reciprocal licensure to a pharmacist duly licensed by examination in this state.

(b) All applications for a reciprocal license shall be accompanied by the fee prescribed by § 17-92-108.

(c)(1) In the interim between sessions of the board and upon satisfactory evidence of the fitness as established by board regulation of an applicant for reciprocity, any member of the board, in his or her discretion, may issue a temporary certificate that shall authorize the holder to practice pharmacy as defined in § 17-92-101.

(2) The temporary certificate shall expire on the date of the next meeting of the board after the granting of the certificate whether that meeting is a regular meeting or a called meeting at which reciprocity is considered.

History. Acts 1955, No. 57, § 3; 1965, §§ 72-1007.3, 72-1042; Acts 1997, No. 480, § 1; 1975, No. 597, § 1; 1979, No. 1029, § 3; 2001, No. 801, § 2.
751, § 1; 1985, No. 616, § 3; A.S.A. 1947, **Cross References.** Fees, § 17-92-108.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Businesses, 24 U. Ark. Little Rock L. Rev. 535.
Legislation, 2001 Arkansas General Assembly, Professions, Occupations, and

17-92-309. Registration and certificate.

(a) The Arkansas State Board of Pharmacy shall register in a suitable book the names and places of residence of all persons to whom it issues certificates and the date of issuance.

(b) The board shall issue an appropriate certificate to each person licensed. The certificate must be conspicuously displayed in every store described in this chapter.

(c) The board may provide by regulation for issuing and waiving the renewal fee for pharmacy certificates denoting special recognition for pharmacists who have the following qualifications:

(1) The pharmacist graduated from a college of pharmacy approved by the board fifty (50) or more years before the date on which the certificate will be issued; or

(2)(A) The pharmacist has held an Arkansas pharmacist license for forty-nine (49) continuous years before the date on which the certificate will be issued without any lapse in the payment of licensure fees.

(B) However, a pharmacist who has paid fees to reinstate an expired license shall not be deemed to have held a license for continuous years.

History. Acts 1891, No. 50, §§ 6, 7, p. Dig., § 4609; A.S.A. 1947, §§ 72-1007, 72-80; C. & M. Dig., §§ 3672, 3673; Pope's 1009; Acts 2003, No. 1092, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of businesses, Pharmacy Practice Act, 26 U. Ark. Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Business, Little Rock L. Rev. 452.

CASE NOTES

Cited: Dunhall Pharmaceuticals, Inc. v. State, 295 Ark. 483, 749 S.W.2d 666 (1988).

17-92-310. Failure to renew.

(a)(1)(A) All retail pharmacy permits, out-of-state pharmacy permits, specialty pharmacy permits, and pharmacist licenses shall expire on December 31 of the first odd-numbered year following the date of issuance.

(B) All preceptor permits shall expire on May 31 of the second calendar year following the date of issuance.

(C)(i)(a) Intern licenses issued to foreign graduates shall expire on December 31 of the second calendar year following the date of issuance.

(b) However, an intern license issued to a foreign graduate shall expire when the intern is issued a pharmacist license.

(ii)(a) An intern license issued to a student intern shall remain valid as long as the intern maintains active student status in a college of pharmacy approved by the Arkansas State Board of Pharmacy and for six (6) months following graduation.

(b) An intern license issued to a student intern shall expire six (6) months following graduation.

(c) An intern license issued to a student intern may be reinstated if the intern resumes active student status in a board-approved college of pharmacy and applies for reinstatement.

(d) An intern license issued to a student intern shall expire when the intern is issued a pharmacist license.

(D) All pharmacy technician permits, hospital pharmacy permits, ambulatory care center pharmaceutical services permits, wholesale distributors of legend or controlled substance permits, wholesale distributors of medical equipment, legend devices, and medical gases permits, institutional pharmaceutical services permits, List I chemical permits, nursing home consultant pharmacist permits, and any other permit, license, registration, or certificate issued by the board and not covered in subdivisions (a)(1)(A)-(C) of this section shall

expire on December 31 of the first even-numbered year following the date of the issuance of the permit, license, registration, or certificate.

(2) Every license, permit, registration, and certificate not renewed within ninety (90) days after expiration thereof shall be void.

(b) The penalty for late payment of renewal for pharmacists, pharmacies, wholesaler/manufacturer of legend drugs and controlled substances, hospital, institutional, and nursing home consultant permits shall be as listed in § 17-92-108, and if renewal remains unpaid on April 1 of any year, the license shall be void.

(c) If a pharmacist's license is not renewed by April 1, the fee for reinstatement shall be as stated in § 17-92-108.

(d) If a pharmacist's license has not been renewed for more than two (2) years, the board shall evaluate the former pharmacist to determine his or her continued ability to practice pharmacy safely with regard to the public health and safety, and the board shall establish conditions for the safe reentry into practice of the profession.

History. Acts 1955, No. 57, § 4; 1965, §§ 72-1010.1, 72-1042; Acts 1991, No. 480, § 1; 1975, No. 597, § 1; 1979, No. 740, § 11; 1997, No. 1029, § 4; 2005, No. 751, § 1; 1985, No. 616, § 3; A.S.A. 1947, 388, § 3.

17-92-311. Revocation, suspension, or nonrenewal — Grounds.

(a) The Arkansas State Board of Pharmacy may revoke an existing license of a licensed pharmacist or may suspend the license or may refuse to issue a license if the holder or applicant, as the case may be, has committed or is found guilty by the board of any of the following acts or offenses set forth:

(1) That the person is guilty of fraud, deceit, or misrepresentation in the practice of pharmacy;

(2) That the person is unfit or incompetent to practice pharmacy by reason of negligent performance of his or her duties;

(3) That the person has been found guilty or pleaded guilty or nolo contendere in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld, by a court of this state, another state, or the federal government for:

(A) Any felony;

(B) Any act involving moral turpitude, gross immorality, or which is related to the qualifications, functions, and duties of a licensee; or

(C) Any violation of the pharmacy or drug laws of this state or rules and regulations pertaining thereto, or of the pharmacy or drug statutes, rules, and regulations of any other state or of the federal government;

(4) That the person has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

(5) That the person has directly or indirectly aided or abetted the practice of pharmacy by a person not authorized to practice pharmacy by the board;

(6) That the person has been guilty of fraud or misrepresentation in obtaining a license to practice pharmacy in the State of Arkansas as a licensed pharmacist;

(7) That the person has been guilty of gross unprofessional or dishonorable conduct;

(8) That the person has willfully violated any of the provisions of the pharmacy laws of the State of Arkansas;

(9) That the person is addicted to the use of intoxicating liquors or drugs to such a degree as to render him or her unfit, in the opinion of the board, to manufacture, compound, sell, or dispense drugs or medicine;

(10) That the person knowingly adulterated or caused to be adulterated any drugs, chemical, or medical preparations and offered such preparations for sale; or

(11) That the person had his or her license to practice pharmacy revoked, suspended, or had other disciplinary action taken, or had his or her application for a license refused, revoked, or suspended, or had voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state.

(b) Nothing in this section should be construed as affecting the rights of any person to appeal any order of the board as now provided by the state pharmacy laws.

History. Acts 1963, No. 245, §§ 1, 2; A.S.A. 1947, §§ 72-1040, 72-1041; Acts 1991, No. 740, § 12.

CASE NOTES

ANALYSIS

Aiding and Abetting Unlawful Practice.
Entrapment.
Procedure.
Willful Violation.

Aiding and Abetting Unlawful Practice.

Subdivision (a)(5) of this section was violated by a pharmacist who signed his name to a prescription which had been prepared by a nonpharmacist clerk in connection with drug refill. *Arkansas State Bd. of Pharmacy v. Patrick*, 243 Ark. 967, 423 S.W.2d 265 (1968).

Clerk who labelled an empty container which was filled by a pharmacist with the drug called for by the prescription was not practicing pharmacy within the prohibition of subdivision (a)(5) of this section. *Arkansas State Bd. of Pharmacy v.*

Whayne, 248 Ark. 934, 454 S.W.2d 667 (1970).

Entrapment.

The presentation, by an agent of the board, of an empty bottle to which was affixed a label of another drug store containing the name of a drug, the name of a purported patient, and the name of a purported prescribing physician to a pharmacist with the request that he refill it was not entrapment. *Arkansas State Bd. of Pharmacy v. Patrick*, 243 Ark. 967, 423 S.W.2d 265 (1968).

Procedure.

Even if there were disqualifying conditions that would have made the registration (now license) holder ineligible for a certificate, his certificate could be cancelled only in the manner provided by statute. *Arkansas State Bd. of Pharmacy*

v. Fey, 235 Ark. 319, 357 S.W.2d 658 (1962) (decision under prior law).

though the board caused the prescription to be presented to him. *Floyd v. Arkansas State Bd. of Pharmacy*, 251 Ark. 626, 473 S.W.2d 866 (1971).

Willful Violation.

Defendant "willfully" violated the law where he filled a false prescription even

17-92-312. Revocation and fine — Adulteration of drugs.

Any licensed pharmacist who shall knowingly, intentionally, and fraudulently adulterate or cause to be adulterated any drugs, chemicals, or medical preparations and offer such adulterations for sale shall be deemed guilty of a misdemeanor. Upon conviction, his or her license shall be revoked and, in addition, he or she shall be liable to a penalty of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100).

History. Acts 1891, No. 50, § 9, p. 80; C. & M. Dig., § 3675; Pope's Dig., § 4611; A.S.A. 1947, § 72-1030.

17-92-313. Revocation — Procedure.

(a)(1) Before revoking the license of any licensed pharmacist, the Arkansas State Board of Pharmacy shall give the person ten (10) days' notice in writing to appear before the board, at such time and place as the board may direct, to show cause why his or her certificate should not be revoked.

(2) The notice shall be signed by the Executive Director of the Arkansas State Board of Pharmacy or the director's designee and shall set forth in clear and concise language the nature of the charge against the person.

(3) Mailing a copy of the notice by registered mail, addressed to the person at his or her address appearing upon the records of the board concerning the issuance of his or her certificate or the last renewal thereof, shall be sufficient service of notice.

(b) At the hearing:

(1) The board shall have the power to subpoena witnesses;

(2) The executive director or the director's designee shall sign subpoenas;

(3) The President of the Arkansas State Board of Pharmacy shall have the power to administer oaths; and

(4) The board shall hear evidence.

(c) If the board finds after a hearing that the certificate or license of the person should be revoked, it shall be done forthwith.

History. Acts 1939, No. 120, § 2; A.S.A. 1947, § 72-1028; Acts 1999, No. 105, §§ 8, 9.

Publisher's Notes. This section may be affected by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

CASE NOTES

ANALYSIS

Hearing.
Ineligibility for Certificate.

Hearing.

Where board denied application of corporation for pharmacy license because registered (now licensed) pharmacist in whose name application was made had previously been subject to disciplinary action in another state and was not "at this time" qualified to act as supervisory pharmacist, action of board in effect amounted

to indefinite suspension of pharmacist's license without hearing and was improper. *Arkansas State Bd. of Pharmacy v. Gibson Prods. Co.*, 239 Ark. 584, 390 S.W.2d 628 (1965).

Ineligibility for Certificate.

Even if there were disqualifying conditions that would make pharmacist ineligible for a certificate, his certificate could be cancelled only in the manner provided by statute. *Arkansas State Bd. of Pharmacy v. Fey*, 235 Ark. 319, 357 S.W.2d 658 (1962).

17-92-314. Revocation — Appeals.

Any person whose certificate of licensure, license, or permit has been revoked by the Arkansas State Board of Pharmacy as provided in this chapter may appeal from the action of the board pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1939, No. 120, § 3; A.S.A. 1947, § 72-1029; Acts 1991, No. 740, § 13.

CASE NOTES

ANALYSIS

Review de Novo.
Rights of Licensee.

Review de Novo.

For cases concerning provisions of this section which, prior to the 1991 amendment, granted a trial de novo on appeal, see *Arkansas State Bd. of Pharmacy v. Gibson Prods. Co.*, 239 Ark. 584, 390 S.W.2d 628 (1965); *Arkansas State Bd. of Pharmacy v. Patrick*, 243 Ark. 967, 423 S.W.2d 265 (1968).

Rights of Licensee.

This section is not only a grant of power to the board but it is also the grant of a right to the license holder, who may insist on notice, be present at the hearing, and bring an appeal from the action of the board. *Arkansas State Bd. of Pharmacy v. Fey*, 235 Ark. 319, 357 S.W.2d 658 (1962) (Decision under law prior to 1991 amendment).

17-92-315. Alternative penalties.

(a)(1) Whenever the Arkansas State Board of Pharmacy has authority pursuant to applicable laws to suspend, revoke, or deny any permit, license, certificate, credential, or registration or otherwise impose penalties or sanctions on the holder thereof, the board shall have the power and authority to impose on the holder thereof any one (1) or more of the following sanctions:

(A) A monetary penalty not to exceed five hundred dollars (\$500) for each violation;

(B) Require completion of appropriate education programs or courses, or both;

(C) Require successful completion of an appropriate licensing examination, jurisprudence examination, credentialing examination, or any combination of the three (3) examinations;

(D) Place conditions or restrictions upon regulated activities of the holder of the license, permit, certificate, credential, or registration; and

(E) Such other requirements or penalties as may be appropriate to the circumstances of the case and which would achieve the desired disciplinary purposes, but which would not impair the public health and welfare.

(2) The board is authorized to file suit in either the Pulaski County Circuit Court or the circuit court of any county in which the defendant resides or does business to collect any monetary penalty assessed pursuant to this chapter if such a penalty is not paid within the time prescribed by the board.

(3) Upon imposition of a sanction, the board may order that the license, permit, certificate, credential, or registration be suspended until the holder thereof has complied in full with all applicable sanctions imposed pursuant to this section.

(b)(1) No monetary penalty imposed by the board may exceed five hundred dollars (\$500) per violation, nor shall the board impose a monetary penalty on a license, permit, certificate, credential, or registration holder if the license, permit, certificate, credential, or registration has been revoked by the board for such a violation.

(2) Each instance when a federal or state law or board regulation is violated shall constitute a separate violation.

(3) The power and authority of the board to impose sanctions authorized in this section are not to be affected by any other civil or criminal proceeding concerning the same violation, nor shall the imposition of a penalty preclude the board from imposing other sanctions short of revocation.

(c) Any person sanctioned by the board under this section may appeal any order of the board as now provided by the state pharmacy laws.

(d) In addition to other sanctions authorized by this chapter, the board may also impose a civil penalty under this section against an unlicensed person or entity practicing or providing goods or services or offering to practice or provide any goods or services requiring licensure under this chapter.

History. Acts 1979, No. 143, §§ 1, 2; 1983, No. 511, § 7; 1985, No. 616, § 1; A.S.A. 1947, §§ 72-1011.7a, 72-1011.7b; Acts 1991, No. 740, § 14; 1999, No. 105, § 10; 2009, No. 355, § 4.

Amendments. The 2009 amendment added (d).

17-92-316. Credential required for professional pharmacy service.

(a)(1) The Arkansas State Board of Pharmacy may provide by regulation for credentialing and approval of pharmacists to practice disease state management and any other pharmacy services determined by the board to require a credential.

(2)(A) The credentials may be issued by agencies approved by the board to pharmacists who qualify pursuant to minimum competencies, standards, objectives, and qualifications determined by the board.

(B) However, a credential shall not authorize the pharmacist to practice credentialed pharmacy service in Arkansas until after the board has determined that the credentialed pharmacist meets the minimum competencies, standards, objectives, and qualifications determined by the board.

(b) The board shall adopt regulations necessary and appropriate to implement the credentialing and the board's approval of pharmacists to practice disease state management and other credentialed pharmacy services, including:

(1) Identification of areas of credentialed pharmacy services;

(2) Identification of the minimum competencies, standards, objectives, and qualifications necessary for a credential and the board's approval to practice in each area of credentialed pharmacy service;

(3) Identification of the standards for qualifying an agency to issue credentials for areas of pharmacy services;

(4) The procedure and standards, which may include a practical examination, for the board's review and approval of a credential and determination of a pharmacist's qualifications to practice disease state management or other credentialed pharmacy service;

(5) The conversion of a credential previously issued by the board for the practice of disease state management or other pharmacy service to a credential issued by an approved credentialing agency; and

(6) Continuing professional education and other measures to maintain pharmacists' continuing competency in disease state management and other credentialed pharmacy services.

(c) The board shall promulgate regulations to:

(1) Identify areas of credentialing;

(2) Establish procedures for initial application and renewal;

(3) Define the minimum competencies and standards to be examined;

(4) Define the qualifications for credentialing; and

(5) Define required continuing education, competencies, standards, and other information necessary to implement this chapter.

17-92-317. Criminal background check.

(a)(1) Each applicant for a new intern or pharmacist license or a new or reinstated registration as a pharmacy technician issued by the Arkansas State Board of Pharmacy shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(2) However, the board may:

(A) Authorize the criminal background check obtained for a license or registration to be used for a subsequent application for another new license or registration issued by the board for a designated time period after the date of the original license or registration; and

(B)(i) Exempt from obtaining a criminal background check an applicant for a pharmacist license who upon licensure will not practice pharmacy while physically present in the State of Arkansas.

(ii) However, before performing any practice of pharmacy while physically present within the State of Arkansas, such an applicant shall obtain the criminal background check and be subject to the provisions of this section.

(b) The criminal background check shall conform to the applicable federal standards as in effect on January 1, 2003, and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the commission by the applicant of any offense listed in subsection (e) of this section.

(e) Notwithstanding the provisions of § 17-1-103, no person shall be eligible to receive or hold an intern or pharmacist license or pharmacy technician registration issued by the board if that person has pleaded guilty or nolo contendere to, or has been found guilty of, any of the following offenses, regardless of whether an adjudication of guilt or sentencing or imposition of sentence is withheld, by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

(1) Any felony;

(2) Any act involving moral turpitude, gross immorality, dishonesty, or which is related to the qualifications, functions, and duties of a person holding the license or registration; or

(3) Any violation of Arkansas pharmacy or drug law or regulations, including, but not limited to, this chapter, the Uniform Controlled Substances Act, § 5-64-101 et seq., and the Food, Drug, and Cosmetic Act, § 20-56-201 et seq.

(f)(1)(A) The board may issue a nonrenewable provisional license or registration pending the results of the criminal background check.

(B) The nonrenewable provisional license or registration shall be valid for no more than six (6) months.

(2) Upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding the nonrenewable provisional license or registration has pleaded guilty or nolo contendere to, or has been found guilty of, any offense under subsection (e) of this section, the board shall immediately revoke the nonrenewable provisional license or registration.

(g)(1) The provisions of subsection (e) of this section and subdivision (f)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure or registration; or

(B) The person holding a license or registration subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the public health, safety, or welfare.

(h)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police under this section shall not be available for examination except by:

(A) The affected applicant or the applicant's authorized representative; or

(B) The person whose license or registration is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(i) Only information pertaining to the person making the request may be made available to the affected applicant or the person whose license or registration is subject to revocation.

(j) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the criminal background check.

(k) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

History. Acts 2003, No. 1092, § 3.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of professions, Pharmacy Practice Act, 26 U. Ark. Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Busi- Little Rock L. Rev. 452.

SUBCHAPTER 4 — PHARMACIES

SECTION.

- 17-92-401. Applicability to out-of-state operations.
 17-92-402. Licensed pharmacist required.
 17-92-403. Licensed pharmacist required — Exceptions.
 17-92-404. Pharmacy permit required.
 17-92-405. Pharmacy permit — Application.

SECTION.

- 17-92-406. [Repealed.]
 17-92-407. Revocation — Grounds.
 17-92-408. Revocation — Procedure.
 17-92-409. Pharmacy library required.
 17-92-410. Records of poison sales.
 17-92-411. Prescription contents and labels.
 17-92-412. Nursing home consultant permit.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Preambles. Acts 1891, No. 50 contained a preamble which read: "Whereas, in all civilized countries it has been found necessary to regulate the traffic in medicines and poisons and to provide by law for the regulation of the delicate and responsible business of compounding and dispensing the powerful agents used in medicines; and

"Whereas, the safety and welfare of the public are endangered by the sale of poisons by unqualified and ignorant persons; and

"Whereas, the power of physicians to overcome disease depends greatly upon their ability to procure good, unadulterated drugs and skillfully prepared medicines; and

"Whereas, the sophistication and adulteration of drugs and medicines is a specious fraud which should be prevented and suitably punished;

"Therefore...."

Acts 1955, No. 57 contained a preamble which read: "Whereas, the present laws governing the compounding and dispensing of drugs are inadequate, in that the present law allows unlicensed persons to practice under the supervision of registered pharmacists; and

"Whereas, the present law must be modified and adequate provision made to safeguard the health of the people of the State of Arkansas by insuring that only qualified people are allowed to compound

and dispense drugs;

"Now, therefore...."

Acts 1983, No. 562 contained a preamble which read: "Whereas, many residents of this state are required to take several different medications daily; and

"Whereas, many of these residents are elderly people who have difficulty in remembering and identifying the medications to be taken at particular times and for particular purposes; and

"Whereas, it would be helpful to those persons who are taking multiple medications if the purposes of the medications were stated on the prescription label of the prescription container;

"Now, therefore...."

Effective Dates. Acts 1891, No. 50, § 17: effective on passage.

Acts 1929, No. 72, § 18: effective on passage.

Acts 1971, No. 73, § 2: approved Feb. 12, 1971. Emergency clause provided: "It having been found and declared by the General Assembly of the State of Arkansas that there is an immediate need for pharmacy service to charitable clinics and that it is highly desirable that special permits be issued authorizing the limited practice of pharmacy in hospitals, institutions and charitable clinics to safeguard the public health and safety, and this act being necessary for the immediate preservation of the public peace, health and safety of the people of the State of Arkansas, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

17-92-401. Applicability to out-of-state operations.

(a) A pharmacy operating outside the state that routinely ships, mails, or delivers in any manner a dispensed legend drug into Arkansas or otherwise practices pharmacy in Arkansas shall hold a pharmacy license issued by the Arkansas State Board of Pharmacy, and that part of the pharmacy operation dispensing the prescription for an Arkansas resident shall abide by Arkansas law and regulations of the board.

(b)(1) Any pharmacy operating outside the state that routinely ships, mails, or delivers in any manner a dispensed legend drug into Arkansas shall be required to have on staff in the out-of-state pharmacy an Arkansas-licensed pharmacist, who shall be designated the pharmacist-in-charge for the Arkansas out-of-state pharmacy license.

(2) If the out-of-state pharmacy fails to have on staff an Arkansas-licensed pharmacist due to extended illness, death, resignation, or for any other reason, the pharmacy within ten (10) calendar days shall notify the board of the fact and must within thirty (30) calendar days or such additional time at the discretion of the board not to exceed thirty (30) calendar days, either:

(A) Secure the services of an Arkansas-licensed pharmacist; or

(B) Cease to operate as a pharmacy in the State of Arkansas.

(c) An out-of-state pharmacy that ships, mails, or delivers in any manner a dispensed legend drug into Arkansas shall designate an agent who is a resident of Arkansas for service of process and register the agent with the Secretary of State.

(d) If under investigation for violation of this chapter, an out-of-state pharmacy shall be required to appear before the board to respond to questions concerning the investigation.

(e) The board shall have all the powers to enforce this chapter as are granted to the board under § 17-92-101 et seq.

History. Acts 1983, No. 511, § 8; A.S.A. 1947, § 72-1062; Acts 1999, No. 1486, § 1; 2009, No. 355, § 5. inserted "Arkansas or otherwise practices pharmacy in" and made minor stylistic changes in (a).

Amendments. The 2009 amendment

17-92-402. Licensed pharmacist required.

(a) It shall be unlawful for any person not a licensed pharmacist within the meaning of this act to conduct any pharmacy or other facility subject to this subchapter for the purpose of retailing, compounding, dispensing medicines, or otherwise performing the practice of pharmacy as defined in § 17-92-101 in the State of Arkansas except as provided.

(b) It shall be unlawful for the proprietor of a store or pharmacy or other facility subject to this chapter to allow any person other than a licensed pharmacist to compound or dispense the prescriptions of authorized practitioners except as an aid to and under the supervision of a licensed pharmacist as provided in this chapter.

(c) However, any person who is not a licensed pharmacist may own or conduct a pharmacy or other facility as identified in § 17-92-403 if the owner keeps constantly in the pharmacy or other facility a licensed pharmacist subject to § 17-92-607.

(d) Any person violating the provisions of this act shall be guilty of a violation and upon conviction shall be liable to a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100).

History. Acts 1891, No. 50, §§ 1, 11, p. 80; C. & M. Dig., §§ 3667, 3677; Acts 1929, No. 72, §§ 2, 3; Pope's Dig., §§ 4603, 4613; A.S.A. 1947, §§ 72-1014, 72-1015; Acts 2001, No. 910, § 3; 2005, No. 1994, § 90.

Meaning of "this act". Acts 1891, No. 50, codified as §§ 17-92-104, 17-92-107, 17-92-201, 17-92-202, 17-92-204, 17-92-303, 17-92-305, 17-92-306, 17-92-309, 17-92-312, 17-92-402, and 17-92-406.

CASE NOTES

Cited: Harvey v. Peters, 237 Ark. 687, 375 S.W.2d 654 (1964).

17-92-403. Licensed pharmacist required — Exceptions.

(a) No person shall operate a pharmacy or other facility dispensing prescriptions as identified in this section or be issued a pharmacy permit or other permit issued by the Arkansas State Board of Pharmacy to facilities dispensing prescriptions unless an Arkansas-licensed pharmacist-in-charge is on duty in the drugstore or pharmacy a minimum of forty (40) hours per week or as otherwise provided in this chapter or by board regulation.

(b) In the absence of a licensed pharmacist, no one shall fill a prescription except a student serving as a graduate intern.

(c) If the owner of any pharmacy or other facility dispensing prescriptions as identified in this section fails to have on duty a licensed pharmacist-in-charge forty (40) hours per week or as otherwise provided in this chapter due to illness, death, resignation, or for any other reason, the owner shall within three (3) days notify the board of the fact and must within thirty (30) days or such additional time at the discretion of the board either secure the services of a licensed pharmacist-in-charge or remove all prescription legend drugs and drug signs from the pharmacy or facility as identified in this section and cease to operate as a pharmacy or facility as identified in this section.

(d)(1) The board shall provide by regulation for the issuance of permits for specialty pharmacies to which § 17-92-607 shall apply.

(2) The owners of specialty pharmacies shall have on duty a licensed pharmacist-in-charge whose minimum number of hours on duty shall be determined by board regulations regarding the nature of the pharmacy service provided.

(3) Specialty pharmacies dispensing prescriptions to in-house patients that are cared for on a twenty-four-hour-per-day basis must have a pharmacist on duty no less than forty (40) hours per week.

(4) The owners of specialty pharmacies shall abide by all provisions established for the employment of pharmacists in this chapter and board regulations.

(5) If the owner of any specialty pharmacy fails to have on duty a licensed pharmacist-in-charge as provided in subdivision (d)(2) or (3) of this section due to illness, death, resignation, or for any other reason, the owner shall within three (3) days notify the board of the fact and shall within thirty (30) days, or such additional time as the board in its discretion may allow, either secure the services of a licensed pharmacist-in-charge or remove all prescription legend drugs and drug signs from the pharmacy and cease to operate the pharmacy.

(e) The board may provide by regulation for the issuance of hospital pharmaceutical permits to pharmacists employed in hospitals under which the pharmacist-in-charge employed in a hospital may have a flexible schedule of attendance and to which the requirement of a licensed pharmacist-in-charge on duty for a minimum of forty (40) hours a week shall not apply.

(f) The board shall provide for the issuance of ambulatory care center pharmaceutical services permits to entities so licensed by the Department of Health and that shall employ a licensed pharmacist-in-charge as provided by board regulation.

(g) The board shall provide by regulation for the issuance of institutional pharmacy permits to governmentally funded institutions that provide inpatient pharmaceutical services to persons confined to such institutions or in which drugs are administered to inpatients on orders of practitioners authorized by law to prescribe or administer the drugs and to which the requirement that the licensed pharmacist-in-charge on duty for a minimum of forty (40) hours a week shall not apply.

(h) The board may provide by regulation for the issuance of charitable clinic pharmacy permits to clinics operated on a nonprofit basis to furnish medical and dental care to poor and underprivileged persons and in which drugs are dispensed or administered to such persons on orders or prescriptions of practitioners authorized by law to prescribe or administer the drugs and to which the requirement of a licensed pharmacist-in-charge on duty for a minimum of forty (40) hours a week shall not apply.

History. Acts 1955, No. 57, § 14; 1971, 1947, § 72-1017.1; Acts 2001, No. 910, No. 73, § 1; 1975, No. 533, § 1; A.S.A. § 4.

CASE NOTES

ANALYSIS

Constitutionality.
Denial of Permit.

Constitutionality.

This section is constitutional. *Harvey v. Peters*, 237 Ark. 687, 375 S.W.2d 654 (1964).

Denial of Permit.

Where board denied application of corporation for pharmacy license because registered (now licensed) pharmacist in whose name application was made had previously been subject to disciplinary action in another state and was not "at this time" qualified to act as supervisory pharmacist, action of board in effect amounted

to indefinite suspension of pharmacist's license without hearing and was improper. *Gibson Prods. Co., 239 Ark. 584, 390 S.W.2d 628 (1965).* *Arkansas State Bd. of Pharmacy v.*

17-92-404. Pharmacy permit required.

(a) No person shall conduct any pharmacy or other facility as identified in § 17-92-403 in which practitioners' prescriptions are compounded and drugs are retailed or dispensed and in which a licensed pharmacist-in-charge must be employed unless the pharmacy or other facility as identified in § 17-92-403 has obtained a permit issued by the Arkansas State Board of Pharmacy.

(b)(1) Keeping a pharmacy or other facility as identified in § 17-92-403 where drugs and medicines or chemicals are dispensed or sold or displayed for sale at retail or where prescriptions are compounded or which has on it a sign using the words "pharmacist", "pharmaceutical chemist", "apothecary", "pharmacy", "druggist", "drug store", "drugs", or their equivalent in any language, or advertising such a store or shop as a drugstore, apothecary shop, or pharmacy by any method or means shall be prima facie evidence of the sale and dispensing of drugs.

(2) Unless the place so conducted holds a permit issued by the board, it shall be unlawful for any person, firm, or corporation:

(A) To carry on, conduct, or transact a retail business under any name that contains as a part thereof the words "drugs", "drugstore", "pharmacy", "medicine", "apothecary", or "chemist shop" or any abbreviation, translation, extension, or variation thereof; or

(B) In the operation of any pharmacy or other facility as identified in § 17-92-403 in any manner by advertisement, circular, poster, telephone directory listing, sign, or otherwise, to describe or refer to the place of business conducted by such a person, firm, or corporation by such a term, abbreviation, translation, extension, or variation.

(3) Any person, firm, or corporation violating this subsection shall be guilty of a violation and, if a corporation, any officer thereof who participates in such a violation also shall be guilty of a violation and shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300).

(c)(1) The control of the dispensing of medicines being essential to the protection of the public health and general welfare of the people, any violation of subsection (b) of this section may be enjoined by action in any court of competent jurisdiction at the instance of the board or of the owner of any licensed pharmacy.

(2) Proceedings under this subsection shall be governed by rules applicable to circuit courts.

History. Acts 1929, No. 72, §§ 4, 8; 72-1017; Acts 2001, No. 910, § 5; 2005, Pope's Dig., §§ 4625, 4629; Acts 1949, No. 1994, § 91. 336, §§ 2, 3; A.S.A. 1947, §§ 72-1016,

CASE NOTES

Discretion of Board.

The board has no discretion in the matter of issuing pharmacy permits to quali-

fied pharmacists. Arkansas State Bd. of Pharmacy v. Hall, 243 Ark. 741, 421 S.W.2d 888 (1967).

17-92-405. Pharmacy permit — Application.

(a)(1) Upon application, the Arkansas State Board of Pharmacy shall issue a permit to maintain a pharmacy or other facility as described in § 17-92-403 or § 17-92-404 for the sale at retail or otherwise dispensing of drugs and medicines to such persons, firms, or corporations as the board may deem to be qualified to conduct such a pharmacy or other facility.

(2)(A) The permit, to be known as a “pharmacy permit”, “specialty permit”, “hospital pharmaceutical services permit”, or “ambulatory care center pharmacy permit”, is for the compounding of practitioners’ prescriptions and for the manufacture, sale, and distribution of drugs, medicines, and poisons.

(B) The pharmacy, specialty pharmacy, hospital pharmacy, or ambulatory care center pharmacy is to be under the direct supervision of a licensed pharmacist.

(3) All permits shall expire on December 31.

(b) Application for a permit shall be made in such a manner and in such a form as the board may determine.

(c) The permits shall at all times be displayed in a conspicuous place in the pharmacy or other facility as identified in § 17-92-403 for which the permit is issued.

History. Acts 1929, No. 72, §§ 9, 10; §§ 72-1018, 72-1019; Acts 2001, No. 910, Pope’s Dig., §§ 4630, 4631; A.S.A. 1947, § 6.

CASE NOTES

ANALYSIS

Denial of Permit.

Discretion of Board.

Denial of Permit.

Where board denied application of corporation for pharmacy license because registered (now licensed) pharmacist in whose name application was made had previously been subject to disciplinary action in another state and was not “at this time” qualified to act as supervisory pharmacist, action of board in effect amounted to indefinite suspension of pharmacist’s

license without hearing and was improper. Arkansas State Bd. of Pharmacy v. Gibson Prods. Co., 239 Ark. 584, 390 S.W.2d 628 (1965).

Discretion of Board.

This section requires the board to issue pharmacy permits to such persons as the board deems qualified to conduct a pharmacy and confers upon it no discretionary authority other than in the matter of the applicant’s qualifications. Arkansas State Bd. of Pharmacy v. Hall, 243 Ark. 741, 421 S.W.2d 888 (1967).

17-92-406. [Repealed.]

Publisher's Notes. This section, concerning temporary certificates to conduct a pharmacy or drug store, was repealed by Acts 2001, No. 910, § 7. The section was

derived from Acts 1891, No. 50, § 5, p. 80; C. & M. Dig., § 3671; Pope's Dig., § 4607; A.S.A. 1947, § 72-1005.

17-92-407. Revocation — Grounds.

(a) The Arkansas State Board of Pharmacy may revoke any permit issued under this subchapter in the event the holder thereof allows any person other than an Arkansas-licensed pharmacist or those students or graduates of a college of pharmacy serving an internship to fill prescriptions, compound and dispense drugs or medicines, or otherwise perform the duties and functions of a licensed pharmacist.

(b) Whenever any person, firm, partnership, estate, or corporation holding any permit issued under this subchapter obtains a permit by false representations or knowingly violates any of the pharmacy laws or fails to comply with the rules and regulations of the board passed by authority of the pharmacy laws, the board shall revoke the holder's pharmacy permit.

(c) The board shall also revoke any permit issued under this subchapter when information in possession of the board shall disclose that the operations for which the permit was issued are not being conducted according to law or are being conducted so as to endanger the public health or safety.

History. Acts 1955, No. 57, §§ 13, 16; A.S.A. 1947, §§ 72-1028.1, 72-1028.2; Acts 2001, No. 910, § 8.

17-92-408. Revocation — Procedure.

The Arkansas State Board of Pharmacy shall follow the same procedure in revoking any permits issued under this subchapter as provided for revoking certificates of licensure as set out in § 17-92-313.

History. Acts 1955, No. 57, § 17; A.S.A. 1947, § 72-1028.3; Acts 2001, No. 910, § 9.

17-92-409. Pharmacy library required.

There shall be kept in every pharmacy or other facility as identified in § 17-92-403 a library consisting of books, periodicals, and computer software as required by regulations of the Arkansas State Board of Pharmacy.

History. Acts 1929, No. 72, § 11; Pope's Dig., § 4632; Acts 1983, No. 511, § 9; A.S.A. 1947, § 72-1022; Acts 2001, No. 910, § 10.

17-92-410. Records of poison sales.

(a) The proprietor shall at all times keep in his or her place of business a record book in which shall be entered all sales of the following, other than sales to physicians, dentists, veterinarians, and sales made on prescriptions of a physician, dentist, or veterinarian: arsenious acid, hydrocyanic acid, potassium cyanide, cyanide mixture, mercury bichloride, and strychnine and its salts, except in proper dosage in pill and tablet form.

(b)(1) The record shall show in parallel columns: date of sale, name of article sold, quantity of article sold, purpose for which sold, name or initial of dispenser, and the signature and address of the purchaser. The record shall at all times during business hours be open for inspection by any police officer, sheriff, city or town representative, or any representative of the Arkansas State Board of Pharmacy and shall be preserved for a period of not less than two (2) years from the date of the last entry in the record.

(2) If the purchaser is a person not known to the seller, the seller shall require necessary identification to determine the true name and address of the purchaser.

History. Acts 1929, No. 72, §§ 12, 13; Pope's Dig., §§ 4633, 4634; Acts 1959, No. 92, § 1; A.S.A. 1947, §§ 72-1023, 72-1024.

Cross References. Strychnine, sale on prescription, record, § 20-62-102.

17-92-411. Prescription contents and labels.

(a) Labels on original packages shall bear the label of the distributor or manufacturer, with the proper medicinal dose, if a remedy used internally. In the case of poisons, the word "POISON" shall be displayed thereon in a conspicuous manner with the antidote for a poisonous dose.

(b) A doctor of medicine or other person authorized to issue prescriptions, upon the request of the patient, shall indicate briefly and concisely on the prescriptions the conditions for which the medication is prescribed. Every pharmacist filling any such prescription shall include on the label of the prescription container the labeling as stated on the prescription issued.

History. Acts 1929, No. 72, § 7; Pope's Dig., § 4628; Acts 1983, No. 562, § 1; A.S.A. 1947, §§ 72-1021, 72-1063.

17-92-412. Nursing home consultant permit.

(a)(1) The Arkansas State Board of Pharmacy shall provide by regulation for the issuance of nursing home consultant permits.

(2) The consultant pharmacist-in-charge and the nursing home administrator shall be jointly responsible to ensure that a valid permit is posted at the facility at all times.

(b) The board shall set by regulation the standards by which the controlled and legend drugs and devices will be maintained in the nursing home or long-term care facility.

(c) The consultant pharmacist-in-charge, in conjunction with the nursing home administrator and director of nurses, shall ensure the proper control and accountability, storage, and proper utilization of drugs and other legend devices dispensed to patients residing in the facility according to board standards as well as those established by state and federal guidelines.

History. Acts 2001, No. 910, § 11; 2009, No. 355, § 6.

Amendments. The 2009 amendment inserted (a)(2), deleted (c)(2), and redesignated the remaining subdivisions accord-

ingly; and deleted “that will be issued to each nursing home or long-term care facility and for its consultant pharmacist-in-charge for that facility” following “permits” in (a)(1).

SUBCHAPTER 5 — GENERIC DRUGS AND PRICE LISTS

SECTION.

17-92-501. Penalty.

17-92-502. Rules and regulations.

17-92-503. Generic substitutions.

SECTION.

17-92-504. [Repealed.]

17-92-505. Labeling.

17-92-506. Price lists.

17-92-501. Penalty.

Any person licensed or otherwise permitted to practice pharmacy in this state who shall violate any provisions of this subchapter shall be subject to discipline by the Arkansas State Board of Pharmacy, including, but not limited to, revocation of such license or permission, according to procedures established by law or by regulations of the board.

History. Acts 1975, No. 436, § 6; A.S.A. 1947, § 72-1052.

17-92-502. Rules and regulations.

The Arkansas State Board of Pharmacy may adopt such reasonable regulations, not inconsistent with law, as it shall deem necessary to carry out the purposes and intentions of this subchapter.

History. Acts 1975, No. 436, § 7; 1983, No. 511, § 11; A.S.A. 1947, § 72-1053.

17-92-503. Generic substitutions.

(a)(1) Except as provided in subsection (b) of this section, when a pharmacist receives a prescription for a brand or trade name drug product, the pharmacist may dispense a lower cost generically equivalent drug product.

(2) The total amount charged for the substituted generically equivalent drug product or for dispensing the drug product shall not exceed

the amount normally and regularly charged under comparable circumstances by the pharmacist for that drug product or for the dispensing of that drug product.

(3) A pharmacist may not dispense a drug product with a total charge that exceeds the total charge of the drug product originally prescribed unless agreed to by the purchaser.

(b) The pharmacist shall not dispense a generically equivalent drug product under subsection (a) of this section if:

(1) The prescriber, in the case of a prescription in writing signed by the prescriber, indicates in his or her own handwriting by name or initial that no substitution shall be made;

(2) The prescriber, in the case of a prescription other than one in writing signed by the prescriber, expressly indicates that the prescription is to be dispensed as communicated;

(3) The person for whom the drug product is prescribed indicates that the prescription is to be dispensed as written or communicated; or

(4) The Arkansas State Board of Pharmacy has determined that the drug should not be substituted and has notified all pharmacists of that determination.

(c)(1) The Arkansas State Board of Pharmacy shall determine which drugs are generically equivalent as defined in § 17-92-101, relying on standards scientifically supported and generally accepted in the field of pharmacy, and shall notify each licensed pharmacist and the Arkansas State Medical Board of this determination.

(2) In making this determination, the Arkansas State Board of Pharmacy may use a nationally recognized reference source that meets the requirements of this act, notifying each licensed pharmacist and the Arkansas State Medical Board of the reference source to be used and any additions or deletions the Arkansas State Board of Pharmacy may make in its discretion.

History. Acts 1975, No. 436, §§ 1, 2; A.S.A. 1947, §§ 72-1047, 72-1048; Acts 2001, No. 801, §§ 4, 5.

Meaning of "this act". Acts 2001, No. 801, codified as §§ 17-92-101, 17-92-308, 17-92-316, 17-92-503.

RESEARCH REFERENCES

Ark. L. Rev. Generic Drug Bill, 30 Ark. L. Rev. 376.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Professions, Occupations, and Businesses, 24 U. Ark. Little Rock L. Rev. 535.

CASE NOTES

Cited: United States v. Brown, 763 F.2d 984 (8th Cir. 1985).

17-92-504. [Repealed.]

Publisher's Notes. This section, concerning the nonequivalent drug product list, was repealed by Acts 2001, No. 801, § 6. The section was derived from Acts

1975, No. 436, § 4; 1979, No. 218, § 1; A.S.A., 1947, § 72-1050, 72-1050.1.

For present law, see § 17-92-503.

17-92-505. Labeling.

(a)(1) The pharmacist filling a prescription for dispensing to an ultimate patient may affix to the container a label showing:

(A) The pharmacy name, address, and telephone number;

(B) The date of dispensing;

(C) The serial number of the prescription;

(D) The name of the patient;

(E) The name of the prescribing practitioner;

(F) The trade name of the medication, if any, or the generic name and identity of the manufacturer of the dispensed medication, if the medication appears generically listed on the drug formulary list as established by this subchapter;

(G) The strength per unit dose of the medication;

(H) The quantity of the medication; and

(I) Directions for use.

(2) If a pharmacist dispenses a generically equivalent product, the person for whom the medication is prescribed shall be informed prior to dispensing or the label should appropriately indicate the substitution.

(3) However, this subsection shall not apply to the dispensing of medication to inpatients in hospitals.

(4) Further, in an appropriate manner, the prescribing practitioner may indicate that the name, manufacturer, and strength of the medication dispensed shall be deleted from the label.

(b) Any authorized person filling a prescription for dispensing to an ultimate patient shall affix to the container a label showing the trade name of the medication or the generic name of the medication unless directed to the contrary by the physician. Failure to comply with this subsection shall be grounds for disciplinary action.

History. Acts 1975, No. 436, § 4; 1979, No. 218, § 1; A.S.A. 1947, §§ 72-1050, 72-1050.1.

17-92-506. Price lists.

A pharmacist may display, within the confines of the pharmacy, lists of available drug products, other than controlled substances, and current charges for the drug products or for the dispensing of the drug products in specified quantities. Upon request, a pharmacy may make such lists available to its customers and other members of the public.

History. Acts 1975, No. 436, § 5; A.S.A. 1947, § 72-1051.

SUBCHAPTER 6 — HOSPITAL PHARMACIES ACT

SECTION.

- 17-92-601. Short title.
17-92-602. Definitions.
17-92-603. Advisory Committee for Hospital Pharmacies.
17-92-604. Regulatory authority.
17-92-605. Hospital pharmacy license — Services permitted.

SECTION.

- 17-92-606. Hospital pharmaceutical permit.
17-92-607. Unlawful for hospital to hold licensed pharmacy permit — Exceptions.

Effective Dates. Acts 1975, No. 659, § 11: Mar. 28, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate need for the control of all facets of a hospital pharmacy's operations under the State Board of Pharmacy and for the promulgation of rules and regula-

tions for the proper operation of hospital pharmacies. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in force from the date of its approval."

Acts 1981, No. 584, § 4: July 1, 1981.

17-92-601. Short title.

This subchapter may be cited as the "Hospital Pharmacies Act".

History. Acts 1975, No. 659, § 1; A.S.A. 1947, § 72-1054.

17-92-602. Definitions.

As used in this subchapter:

- (1) "Board" means the Arkansas State Board of Pharmacy;
- (2) "Hospital" means a hospital as defined in § 20-9-201;
- (3) "Hospital employee" means any individual employed by a hospital whose compensation for services or labor actually performed for a hospital is reflected on the payroll records of a hospital;
- (4) "Hospital pharmacy" means the place or places in which drugs, chemicals, medicines, prescriptions, or poisons are prepared for distribution and administration for the use or benefit of patients in a hospital. The "hospital pharmacy" may also provide pharmacy services to patients in a "swing bed" within the hospital that may periodically swing back and forth from being a short-term acute hospital bed to a longer-term nursing home bed. The "hospital pharmacy" shall also mean the place or places in which drugs, chemicals, medicines, prescriptions, or poisons are compounded for the dispensing to hospital employees, members of the immediate families of hospital employees, patients being discharged, and for other persons in emergency situations;

(5) "Hospital pharmacy technicians" means persons other than licensed pharmacists who perform duties in conjunction with the overall hospital medication distribution system for inpatients; and

(6) "Licensed pharmacist" means any person licensed to practice pharmacy by the board.

History. Acts 1975, No. 659, § 2; 1981, No. 584, § 1; A.S.A. 1947, § 72-1055; Acts 1999, No. 105, § 15.

17-92-603. Advisory Committee for Hospital Pharmacies.

(a) There is created an Advisory Committee for Hospital Pharmacies to assist the Arkansas State Board of Pharmacy in the promulgation of rules, regulations, and standards for hospital pharmacies.

(b) The committee shall consist of five (5) members, each of whom shall be a licensed pharmacist.

(c)(1) The Arkansas Association of Hospital Pharmacists shall appoint the five (5) members of the committee.

(2) Each member shall serve for a term of three (3) years.

History. Acts 1975, No. 659, § 6; A.S.A. 1947, § 72-1059.

Publisher's Notes. The terms of the members of the Advisory Committee for

Hospital Pharmacies are arranged so that one term expires in one year, two expire in the next year, and two expire in the third year.

17-92-604. Regulatory authority.

(a) The Arkansas State Board of Pharmacy shall adopt, promulgate, and enforce such rules, regulations, and standards as may be necessary to the regulation of the operation of a hospital pharmacy and for the accomplishment of all other purposes of this subchapter.

(b)(1) The Advisory Committee for Hospital Pharmacies shall advise with the board concerning the rules, regulations, and standards to be promulgated by the board under this subchapter. No rule, regulation, or standard shall be promulgated by the board until it has consulted with the committee.

(2) The rules, regulations, and standards shall include, but shall not be limited to, the following specific matters:

(A) The number of licensed pharmacists and other hospital pharmacy technicians and the scope of duties to be performed by the hospital pharmacy technicians in the inpatient medication distribution system, in keeping with the size and scope of the services of the hospital and its hospital pharmacy and the hospital pharmacy's safe, efficient, and economical operation; and

(B) The equipment and supplies necessary to the hospital pharmacy's safe, efficient, and economical operation.

(c) After consultation with the committee, from time to time, the board may modify, amend, or rescind the rules, regulations, and standards, provided the modification, amendment, or rescission does not in any manner defeat the purposes of this subchapter.

History. Acts 1975, No. 659, § 7; A.S.A. 1947, § 72-1060; Acts 1999, No. 105, § 16.

17-92-605. Hospital pharmacy license — Services permitted.

(a) All hospital pharmacies shall be licensed by the Arkansas State Board of Pharmacy as provided for by this subchapter. The hospital pharmacy license shall be issued in the name of the hospital.

(b) Any hospital receiving a permit shall advise the board of the name of:

(1) The hospital administrator or other person assuming responsibility for the general administration of the hospital;

(2) The director of the pharmacy, or other person assuming responsibility for the general operation of the hospital pharmacy, who shall be a licensed pharmacist; and

(3) All other licensed pharmacists employed by the hospital in its hospital pharmacy.

(c) The hospital and the director of pharmacy shall be required to report to the board any change in licensed pharmacist personnel.

(d) Upon the receipt of a hospital pharmacy license, a hospital pharmacy may provide the following pharmaceutical services:

(1) Prepare for distribution and administration of drugs, chemicals, medicines, prescriptions, or poisons for the use or benefit of the patients in the hospital as set forth in § 17-92-602(4); and

(2) Compound or dispense drugs, chemicals, medicines, prescriptions, or poisons for the use or benefit of the hospital's employees, members of the immediate families of hospital employees, patients being discharged, and other persons in emergency situations.

History. Acts 1975, No. 659, §§ 3, 4; 1981, No. 584, § 2; A.S.A. 1947, §§ 72-1056, 72-1057.

17-92-606. Hospital pharmaceutical permit.

Any hospital pharmacy holding a hospital pharmaceutical permit issued by the Arkansas State Board of Pharmacy pursuant to § 17-92-403 on March 28, 1975, shall be deemed to be licensed pursuant to this subchapter until the permit shall expire.

History. Acts 1975, No. 659, § 5; A.S.A. 1947, § 72-1058.

17-92-607. Unlawful for hospital to hold licensed pharmacy permit — Exceptions.

(a) It shall be unlawful for any nonprofit, tax exempt, or governmentally funded hospital to acquire direct or indirect interest in or otherwise hold directly or indirectly a licensed pharmacy permit pursuant to the provisions of § 17-92-405, for the sale at retail of drugs and medicines.

(b) However, nothing contained in this section shall be construed to prohibit any hospital having a direct or indirect interest in or otherwise holding either directly or indirectly a permit prior to March 28, 1975, from continuing to have an interest in or holding the permit. Nothing contained in this section shall be construed to prohibit any hospital so holding a permit prior to March 28, 1975, from receiving a renewal of the permit.

History. Acts 1975, No. 659, § 8; A.S.A. 1947, § 72-1061.

CASE NOTES

Constitutionality.

The fact that this section is broader in scope than the federal Robinson-Patman Act (15 U.S.C. § 13 et seq.) does not invalidate the state statute, for, in applying the rational basis test, the judiciary will not act as a superlegislature to question the means employed to accomplish the state objective. The fact that the Gen-

eral Assembly chose to limit drug diversion by eliminating retail sales by non-profit hospitals, rather than solely by making such actions a crime, does not render the legislation overly broad. Arkansas Hosp. Ass'n v. Arkansas State Bd. of Pharmacy, 297 Ark. 454, 763 S.W.2d 73 (1989).

SUBCHAPTER 7 — PROGRAM FOR PHARMACISTS IMPAIRED BY CHEMICAL
DEPENDENCY

- SECTION.
- 17-92-701. Definitions.
 - 17-92-702. Administration.
 - 17-92-703. Functions.
 - 17-92-704. Board review.
 - 17-92-705. Notification of procedures, rights, and responsibilities — Failure to comply.

- SECTION.
- 17-92-706. Funding.
 - 17-92-707. Liability.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-6 may not apply to this subchapter which was enacted subsequently.

17-92-701. Definitions.

- As used in this subchapter:
- (1) "Board" means the Arkansas State Board of Pharmacy;
 - (2) "Board-approved intervenors" means persons trained in intervention and designated by the board to implement the intervention process when necessary;
 - (3) "Committee" means a committee appointed by the board to formulate and administer the impaired pharmacists program;

(4) "Impaired pharmacist" means a pharmacist who is unable to practice pharmacy with reasonable skill, competency, or safety to the public because of substance abuse;

(5) "Impaired pharmacist program" means a plan approved by the board for intervention, treatment, and rehabilitation of an impaired pharmacist;

(6) "Intervention" means a process whereby an allegedly impaired pharmacist is confronted by the board or board-approved intervenors who provide documentation that a problem exists and attempt to convince the pharmacist to seek evaluation and treatment;

(7) "Rehabilitation" means the process whereby an impaired pharmacist advances in an impaired pharmacist program to an optimal level of competence to practice pharmacy without endangering the public; and

(8) "Verification" means a process whereby alleged professional impairment is identified or established.

History. Acts 1991, No. 741, § 1.

17-92-702. Administration.

(a) The Arkansas State Board of Pharmacy may appoint a committee to organize and administer a program that shall fulfill two (2) functions:

(1) The program shall serve as a diversion program to which the board may refer licensees when appropriate in lieu of or in addition to other disciplinary action; and

(2) The program shall also be a source of treatment or referral for pharmacists who, on a strictly voluntary basis, desire to avail themselves of its services.

(b) The board may appoint a committee of five (5) persons who are recovering pharmacists to serve three-year terms with the initial members appointed to staggered terms.

History. Acts 1991, No. 741, § 2.

17-92-703. Functions.

The functions of the committee shall include:

(1) Evaluation of pharmacists who request participation in the program;

(2) Review and designation of treatment facilities and services to which pharmacists in the program may be referred;

(3) Receipt and review of information relating to the participation of pharmacists in the program;

(4) Assisting the pharmacists' professional association in publicizing the program; and

(5) Preparation of reports for the Arkansas State Board of Pharmacy.

History. Acts 1991, No. 741, § 3.

17-92-704. Board review.

The Arkansas State Board of Pharmacy shall review the activities of the committee. As part of this evaluation, the board may review files of all participants in the impaired pharmacist program. The board shall also resolve complaints voiced regarding the impaired pharmacist program.

History. Acts 1991, No. 741, § 5.

17-92-705. Notification of procedures, rights, and responsibilities — Failure to comply.

(a) The Arkansas State Board of Pharmacy shall inform each pharmacist referred to the program by board action of the procedures followed in the program, of the rights and responsibilities of the pharmacist in the program, and of the possible consequences of non-compliance with the program.

(b) The board shall be informed of the failure of a pharmacist to comply with any treatment provision of a program if the committee determines that the resumption of the practice of pharmacy would pose a threat to the health and safety of the public.

(c) Participation in a program under this section shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this section shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program pursuant to this section.

(d) The board shall be informed when pharmacists who enter the program resume professional practice.

History. Acts 1991, No. 741, § 4.

17-92-706. Funding.

(a)(1) The Arkansas State Board of Pharmacy may provide up to fifty thousand dollars (\$50,000) per year to the committee for the program.

(2) The board may provide to the committee at any time the moneys authorized under subdivision (a)(1) of this section.

(b) Documentation of the use of these funds shall be provided quarterly to the board for review and comment.

History. Acts 1991, No. 741, § 7; 2009, No. 355, § 7.

Amendments. The 2009 amendment, in (a), inserted (a)(2), redesignated the remainder of the text accordingly, substi-

tuted “fifty thousand dollars (\$50,000)” for “five thousand dollars (\$5,000)” in (a)(1), and made minor stylistic changes; and inserted “quarterly” in (b).

17-92-707. Liability.

(a) All persons acting on behalf of the Arkansas State Board of Pharmacy in the impaired pharmacist program under this section shall

be considered officers or employees of the State of Arkansas for purposes of:

- (1) Immunity from civil liability pursuant to § 19-10-301 et seq.; and
- (2) Payment of actual damages on behalf of state officers or employees pursuant to § 21-9-201 et seq.

(b) All patient records shall be confidential and shall not be subject to public inspection except pursuant to an order of a court of competent jurisdiction. However, the records may be introduced as evidence in any relevant proceedings before the board and shall be produced upon board request.

History. Acts 1991, No. 741, § 6.

SUBCHAPTER 8 — CERTIFICATION AND REGISTRATION OF PHARMACIST ASSISTANTS

SECTION.

17-92-801. Powers and duties of Arkan-

sas State Board of Pharmacy.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-6 may not apply to this subchapter which was enacted subsequently.

17-92-801. Powers and duties of Arkansas State Board of Pharmacy.

(a) The Arkansas State Board of Pharmacy shall provide that hospital pharmacy technicians as in § 17-92-602(5) and pharmacy technicians as in § 17-92-101(16)(C), and hereinafter referred to as pharmacy technicians, register with or be certified by the board, or both.

(b) The board may provide reasonable qualifications for a person to be certified as a pharmacy technician or registered as a pharmacy technician, or both, including, without limitation, the education, training, and testing that the board deems necessary to preserve and protect the public health.

(c) The board may suspend or revoke the registration of any person certified as a pharmacy technician or registered as a pharmacy technician, or both, but only after an opportunity for a hearing before the board upon reasonable notice to the person in writing.

(d) Grounds for suspension or revocation of registration or certification as a pharmacy technician, or both, are the following:

- (1) Violation of any law or regulation regarding the practice of pharmacy;
- (2) Violation of any law or regulation regarding legend drugs or controlled substances; or
- (3) Violation of any regulation adopted by the board regarding pharmacy technicians.

History. Acts 1993, No. 922, § 1; 1997, No. 1029, § 5; 1999, No. 105, § 17.

SUBCHAPTER 9 — SUPPLIERS

SECTION.	SECTION.
17-92-901. Definitions.	17-92-907. Manufacture, shipment, or sale of medical gases.
17-92-902. License required.	17-92-908. Revocation or suspension of license.
17-92-903. Exemption from license and permit requirements.	17-92-909. Advisory committee to the board.
17-92-904. Supply order required.	
17-92-905. Labeling.	
17-92-906. Regulations.	

A.C.R.C. Notes. References to “this chapter” in subchapters 1-6 may not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to

the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-92-901. Definitions.

As used in this subchapter:

- (1) “Home medical equipment, legend device, and medical gas supplier” means a person licensed to supply home medical equipment, medical gases, or legend devices, or any combination thereof, to patients on an order from medical practitioners licensed to order, use, or administer these products and to other licensed suppliers of home medical equipment, medical gases, or legend devices, or any combination thereof;
- (2) “Home medical equipment services” means the delivery, installation, maintenance, replacement, or instruction, or any combination thereof, in the use of medical equipment used by a sick or disabled individual to allow the individual to be maintained in a noninstitutional environment;

(3) "Legend device" means a device which, because of any potential for harmful effect or the method of its use, is not safe except under the supervision of a practitioner;

(4)(A) "Medical equipment" means technologically sophisticated medical devices, including, but not limited to:

- (i) Oxygen and oxygen delivery systems;
- (ii) Ventilators;
- (iii) Respiratory disease management devices;
- (iv) Electronic and computer-driven wheelchairs and seating systems;
- (v) Apnea monitors;
- (vi) Transcutaneous electrical nerve stimulator units;
- (vii) Low air loss cutaneous pressure management devices;
- (viii) Sequential compression devices;
- (ix) Neonatal home phototherapy devices;
- (x) Feeding pumps;
- (xi) Electrically powered hospital beds; and
- (xii) Infusion pumps.

(B) "Medical equipment" does not include:

- (i) Medical equipment used or dispensed in the normal course of treating patients by hospitals, hospices, nursing facilities, or home health agencies;
 - (ii) Medical equipment used or dispensed by health care professionals licensed in Arkansas, provided that the professional is practicing within the scope of that professional's practice act;
 - (iii) Upper and lower extremity prosthetics and related orthotics; or
 - (iv) Canes, crutches, walkers, bathtub grab bars, standard wheelchairs, commode chairs, and bath benches;
- (5) "Medical gas" means those gases and liquid oxygen intended for human consumption; and
- (6) "Order" means an order issued by a licensed medical practitioner legally authorized to order medical gases or legend devices, or both.

History. Acts 1995, No. 1101, § 1.

17-92-902. License required.

(a)(1) No person or entity subject to licensure shall sell or rent or offer to sell or rent directly to patients in this state any home medical equipment, legend devices, or medical gases, or any combination thereof, unless the person or entity is licensed as required by this subchapter.

(2) The licensure requirements of this subchapter will apply to all companies, agencies, and other business entities that are in the business of supplying medical equipment to patients in their residences and that bill the patient or the patient's insurance, Medicare, Medicaid, or other third-party payor for the rent or sale of that equipment.

(b)(1) The application for a license shall be on a form furnished by the Arkansas State Board of Pharmacy and shall be accompanied by payment of the fee prescribed by § 17-92-108.

(2) The board shall require a separate license for each facility directly or indirectly owned or operated within this state by the same person or business entity within this state, or for a parent entity with divisions, subdivisions, subsidiaries, or affiliate companies, or any combination thereof, when operations are conducted at more than one (1) location and there exists joint ownership and control among all the entities.

(c)(1) All licenses issued under this subchapter shall expire on December 31 of each calendar year.

(2)(A) Each application for renewal of the license must be made on or before December 31 of each year.

(B) Penalties for late payment include:

(i) A twenty-dollar penalty if not paid by February 1 of each year; and

(ii) A forty-dollar penalty if not paid by March 1 of each year.

(C) The license shall be considered null and void if the fee is not paid by April 1 of each year.

(d) Wholesale distributors licensed under § 20-64-501 et seq. may exchange those licenses for licenses issued under this subchapter without payment of additional fees.

(e) Each license issued hereunder shall be displayed by the holder thereof in a conspicuous place.

History. Acts 1995, No. 1101, §§ 4, 11; 1997, No. 1029, §§ 6, 7.

17-92-903. Exemption from license and permit requirements.

(a) The licensure requirements of this subchapter and any retail pharmacy permit requirements that may apply to the distribution or provision of legend medical gases, medical equipment, legend devices, and medical supplies, except legend drugs, do not apply to the following unless the following have a separate company, corporation, division, or other business entity that is in the business of providing medical equipment for sale or rent to a patient at his or her home as covered by this subchapter:

(1) Home health agencies;

(2) Hospitals;

(3) Manufacturers and wholesale distributors when not selling directly to the patient;

(4) Health care practitioners legally eligible to prescribe or order home medical equipment, medical gases, and legend devices;

(5) Medical doctors, physical therapists, respiratory therapists, occupational therapists, speech pathologists, optometrists, chiropractors, and podiatrists who use home medical equipment or legend devices, or both, to treat patients;

(6) Nurses who use but do not sell home medical equipment or legend devices, or both, to their patients;

(7) Pharmacies;

(8) Hospice programs;

(9) Nursing homes;

(10) Veterinarians;

(11) Dentists; and

(12) Emergency medical services.

(b) Although excluded from a separate licensure requirement for medical equipment, pharmacies shall be subject to the same rules and regulations for the sale or rental of medical equipment covered by this subchapter.

History. Acts 1995, No. 1101, § 5.

17-92-904. Supply order required.

(a) Home medical equipment, legend device, and medical gas suppliers shall not supply medical gases or legend devices to a patient without an order.

(b)(1) Orders may be issued for institutional, medical practitioner, and individual patient use.

(2) It is also recognized that oxygen, liquid oxygen, and legend devices may be used in emergencies by trained individuals.

(3) Nothing in this subchapter shall prohibit the prehospital emergency administration of oxygen by licensed health care providers, emergency medical technicians, first responders, firefighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.

History. Acts 1995, No. 1101, § 6.

17-92-905. Labeling.

(a) Medical gases shall be labeled in compliance with existing federal and state laws.

(b) All legend devices shall be labeled in compliance with existing federal and state laws.

History. Acts 1995, No. 1101, §§ 2, 3.

17-92-906. Regulations.

(a)(1) The Arkansas State Board of Pharmacy shall adopt regulations for the distribution of home medical equipment, legend devices, and medical gases which promote the public health and welfare and which comply with, at least, the minimum standards, terms, and conditions of federal laws and federal regulations.

(2) The regulations shall include, without limitation:

(A) Minimum information from each home medical equipment, legend device, and medical gas supplier required for licensing and renewal of licenses;

(B) Minimum qualifications of persons who engage in the distribution of these products;

(C) Appropriate education or experience, or both, of persons employed in distribution of these products who assume responsibility for positions related to compliance with state licensing requirements;

(D) Minimum requirements for the storage and handling of these products;

(E) Minimum requirements for the establishment and maintenance of distribution records for these products; and

(F) Federal and state labeling requirements.

(b) State regulations shall not apply to the following:

(1) Home health agencies;

(2) Hospitals;

(3) Manufacturers and wholesale distributors when not selling directly to the patient;

(4) Health care practitioners legally eligible to prescribe or order home medical equipment, medical gases, and legend devices;

(5) Medical doctors, physical therapists, respiratory therapists, occupational therapists, speech pathologists, optometrists, chiropractors, and podiatrists who use home medical equipment or legend devices, or both, to treat patients;

(6) Nurses who use but do not sell home medical equipment or legend devices, or both, to their patients;

(7) Hospice programs;

(8) Nursing homes; and

(9) Veterinarians.

(c) No regulations promulgated to implement this subchapter shall be effective until they have been reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

History. Acts 1995, No. 1101, §§ 7, 12;
1997, No. 179, § 15.

17-92-907. Manufacture, shipment, or sale of medical gases.

(a) The manufacture within this state, shipment into this state, or sale or offer for sale within this state of medical gases shall not be subject to § 20-56-211(11)(C).

(b)(1) Pursuant to this subchapter, the dispensing of medical gases does not require a retail pharmacy permit.

(2) The sale of medical gases directly to patients shall not be subject to § 20-56-211(11)(C) or § 20-64-504.

History. Acts 1995, No. 1101, § 10.

A.C.R.C. Notes. As enacted, subsection

(a) and subdivision (b)(2) began: "After July 28, 1995,".

17-92-908. Revocation or suspension of license.

The Arkansas State Board of Pharmacy may revoke or suspend licenses or may refuse to issue any license under this subchapter if the holder or applicant has committed or is found guilty by the board of any of the following:

(1) Violation of any federal, state, or local law or regulation relating to medical equipment, medical gases, and medical supplies, except legend drugs and legend devices;

(2) Violation of any provisions of this subchapter or any regulation promulgated hereunder; or

(3) Commission of an act or engaging in a course of conduct which constitutes a clear and present danger to the public health and safety.

History. Acts 1995, No. 1101, § 9.

17-92-909. Advisory committee to the board.

(a) There is created an Advisory Committee to the Arkansas State Board of Pharmacy to be composed of seven (7) members.

(b)(1) Five (5) members, one (1) of whom shall be a hospital-based medical equipment supplier, and none of whom can be a registered pharmacist or a representative of a company which is primarily in the business of pharmacy, shall be appointed by the board from a list of at least eight (8) names furnished by a nominating committee composed of two (2) members of the Medical Equipment Suppliers Association of Arkansas, two (2) members of the Home Care Association of Arkansas, and two (2) members of the Arkansas State Board of Pharmacy.

(2) The remaining two (2) members of the committee shall be appointed by the board.

(c) All members shall be actively involved in businesses licensed by this subchapter.

(d) The committee shall review and make recommendations to the board on the merit of all regulations dealing with medical equipment, legend devices, and medical gases which are proposed by the board and before they are adopted by the board.

History. Acts 1995, No. 1101, § 8.

SUBCHAPTER 10 — ARKANSAS INTERNET PRESCRIPTION CONSUMER PROTECTION ACT

SECTION.

17-92-1001. Title.

17-92-1002. Purpose.

17-92-1003. Definitions.

17-92-1004. Requirements for Internet sales.

SECTION.

17-92-1005. Requirements for Internet sites.

17-92-1006. Disclaimers or limitations of liabilities.

17-92-1007. Enforcement.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-6 may not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 2007, No. 128, § 3: Feb. 21, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Internet sales of prescription drugs have been made to Arkansas citizens by out-of-state pharmacies that are not licensed or regulated in this state; that the unlicensed and unregulated sale of prescription drugs threatens the health and safety of the citizens of this state; and that this act is necessary because only the

explicit prohibition created by this act will allow the federal intervention necessary to interdict unlicensed and unregulated Internet sales of prescription drugs to Arkansas citizens. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

17-92-1001. Title.

This subchapter may be known and cited as the “Arkansas Internet Prescription Consumer Protection Act”.

History. Acts 2001, No. 1411, § 1.

RESEARCH REFERENCES

ALR. State and federal regulation of prescribing medication over the internet. 3 A.L.R.6th 1.

17-92-1002. Purpose.

The purpose of this subchapter is to require Internet pharmacies to:

- (1) Make certain disclosures on their Internet sites;
- (2) List the principals, pharmacists, and physicians associated with the Internet sites; and
- (3) Include amending licensing requirements for pharmacists and physicians to address prescribing and dispensing medication via the Internet.

History. Acts 2001, No. 1411, § 2.

17-92-1003. Definitions.

As used in this subchapter:

- (1) “Deliver” means the actual, constructive, or attempted transfer from one (1) person to another of any drug whether or not an agency relationship exists;
- (2) “Dispense” means to deliver prescription medication to the ultimate user or research subject pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner;

(3) "Distribute" means to deliver, other than by administering or dispensing, any drug;

(4) "Electronic mail" means any message transmitted through the international network of interconnected government, educational, and commercial computer networks, including, but not limited to, messages transmitted from or to any address affiliated with an Internet site;

(5) "Foreign entity" means any corporation, limited liability company, or other body corporate organized under the law of any jurisdiction other than the State of Arkansas;

(6) "Internet broker" means an entity that serves as an agent or intermediary or other capacity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of prescription-only drugs;

(7) "Internet site" means a specific location on the international network of interconnected government, educational, and commercial computer networks that is determined by Internet protocol numbers, by a domain name, or by both, including, but not limited to, domain names that use the designations ".com", ".edu", ".gov", ".org", and ".net";

(8) "Person" means any individual, corporation, partnership, limited liability company, limited liability partnership, limited partnership, association, joint venture, or any other legal or commercial entity, whether foreign or domestic;

(9) "Pharmacist" means any natural person licensed under this subchapter to practice pharmacy;

(10) "Pharmacy", "drug store", or "apothecary" means premises, laboratory, area, or other place:

(A) Where drugs are offered for sale, where the profession of pharmacy is practiced, and where prescriptions are compounded and dispensed;

(B) Which has displayed upon it or within it the words "pharmacist", "pharmaceutical chemist", "pharmacy", "apothecary", "drug-store", "druggist", "drugs", "drug sundries", or any of these words or combination of these words; or

(C) Where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited;

(11) "Practitioner" means:

(A) A person licensed to practice medicine and surgery, dentistry, podiatry, veterinary medicine, or optometry licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee; or

(B) A scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug;

(12) "Premises" means the portion of any building or structure leased, used, or controlled by the licensee in the conduct of the business registered by the Arkansas State Board of Pharmacy at the address for which the registration was issued;

(13)(A) "Prescription-only drug" means any drug, whether intended for use by man or animal, required by federal or state law to be

dispensed only pursuant to a written or oral prescription or order of a practitioner or that is restricted to use by practitioners only.

(B) "Prescription-only drug" does not mean contact lenses;

(14)(A) "Prescription order" means:

(i) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or

(ii) An order transmitted to a pharmacist through word of mouth, note, telephone, or other means of communication directed by the practitioner or mid-level practitioner.

(B) In the absence of a prior and proper patient-practitioner relationship, "prescription order" does not include an order for a prescription-only drug issued solely in response to:

(i) An Internet questionnaire;

(ii) An Internet consultation; or

(iii) A telephonic consultation; and

(15) "Proper practitioner-patient relationship" means that before the issuance of a prescription, a practitioner, physician, or other prescribing health professional performs a history and in-person physical examination of the patient adequate to establish a diagnosis and to identify underlying conditions or contraindications to the treatment recommended or provided unless:

(A) The prescribing practitioner is consulting at the specific request of another practitioner who:

(i) Maintains an ongoing relationship with the patient;

(ii) Has performed an in-person physical examination of the patient; and

(iii) Has agreed to supervise the patient's ongoing care and use of prescribed medications; or

(B) The prescribing practitioner interacts with the patient through an on-call or cross-coverage situation.

History. Acts 2001, No. 1411, § 3; 2007, No. 128, § 1; 2009, No. 355, § 8. Ignated the remaining subdivisions accordingly; and made a stylistic change.

Amendments. The 2007 amendment inserted (6), (14)(B), and (15), and reded. The 2009 amendment rewrote (15).

17-92-1004. Requirements for Internet sales.

(a) A pharmacy operating within or outside Arkansas shall not sell, dispense, distribute, deliver, or participate in the sale, dispensing, distribution, or delivery of a prescription-only drug to any consumer in this state through an Internet site or by electronic mail unless:

(1) All Internet sites and electronic mail used by the person for purposes of sales or delivery of a prescription-only drug are in compliance with all requirements of federal law applicable to the Internet site or electronic mail;

(2)(A) The pharmacy that sells, dispenses, distributes, or delivers the prescription-only drug is in compliance with all requirements of relevant state law.

(B) The pharmacy shall be properly regulated by the Arkansas State Board of Pharmacy to engage in the practice of pharmacy pursuant to § 17-92-101 et seq.;

(3) The pharmacist who fills the prescription order is in compliance with subsection (c) of this section;

(4)(A) Any pharmacy that participates in the sale of a prescription-only drug is in compliance with subsection (d) of this section.

(B) Any pharmacy that participates in the sale of a prescription-only drug is in compliance with an Arkansas prescription drug monitoring program, if an Arkansas prescription drug monitoring program exists;

(5)(A) The pharmacy, if a foreign entity, is registered with the Secretary of State and is in compliance with all requirements for foreign corporations provided in any applicable state law.

(B) Nothing in this subdivision (a)(5) shall be construed to authorize any corporation to engage in the practice of medicine contrary to any applicable Arkansas law; and

(6) Any practitioner who sells, dispenses, distributes, or delivers the prescription-only drug is in compliance with all requirements of relevant state law.

(b) Any practitioner who writes a prescription order through an Internet site or electronic mail for a consumer physically located in this state who is not an established patient shall be licensed by the applicable licensing board and in compliance with all applicable laws.

(c) A pharmacist practicing within or outside Arkansas may not fill a prescription order to dispense a prescription-only drug to a patient if the pharmacist knows or reasonably should have known under the circumstances that the prescription order was issued:

(1) On the basis of:

- (A) An Internet questionnaire;
- (B) An Internet consultation; or
- (C) A telephonic consultation; and

(2) Without a valid prior patient-practitioner relationship.

(d)(1) An Internet broker operating within or outside Arkansas may participate in the sale of a prescription-only drug in this state only if the Internet broker knows that the pharmacist who dispenses the drug has complied with the requirements of subsection (c) of this section.

(2) The board shall report to the Attorney General any violations of subdivision (d)(1) of this section.

History. Acts 2001, No. 1411, § 4; 2007, No. 128, § 2.

Amendments. The 2007 amendment, in (a), inserted "operating within or outside Arkansas," inserted (a)(3) and (a)(4)

and redesignated the following subdivisions accordingly, and substituted "(a)(5)" for "(a)(3)" in (a)(5)(B); and added (c) and (d).

RESEARCH REFERENCES

ALR. Validity of state statutes and administrative regulations regulating internet communications under commerce clause and First Amendment of federal constitution. 98 A.L.R.5th 167.
State and federal regulation of prescribing medication over the internet. 3 A.L.R.6th 1.

17-92-1005. Requirements for Internet sites.

No pharmacy shall sell, dispense, distribute, deliver, or participate in the sale, dispensing, distribution, or delivery of any prescription-only drug to any consumer in this state if any part of the transaction was conducted through an Internet site unless the Internet site displays in a clear and conspicuous manner the:

- (1) Name of each pharmacy that causes the sale, dispensing, or delivery of a prescription-only drug to any consumer in this state;
- (2) Address of the principal place of business of each pharmacy that causes the sale, dispensing, or delivery of a prescription-only drug to any consumer in this state;
- (3) Telephone number of each pharmacy that causes the sale, dispensing, or delivery of a prescription-only drug to any consumer or other person in this state; and
- (4) Pharmacy's:

- (A) Permit number assigned by the Arkansas State Board of Pharmacy; or
- (B) Certification by the National Association of Boards of Pharmacy as a Verified Internet Pharmacy Practice Sites site and the Verified Internet Pharmacy Practice Sites seal with a link to the National Association of Boards of Pharmacy's verification site.

History. Acts 2001, No. 1411, § 5.

RESEARCH REFERENCES

ALR. State and federal regulation of prescribing medication over the internet. 3 A.L.R.6th 1.

17-92-1006. Disclaimers or limitations of liabilities.

- (a) No pharmacy that sells, dispenses, distributes, delivers, prescribes, or participates in the sale, dispensing, or delivery of any prescription-only drug to any consumer in this state, if the consumer submitted the purchase order for the prescription-only drug through an Internet site or by electronic mail, may disclaim, limit, or waive any liability to which the pharmacy otherwise is subject under law for the act or practice of selling, dispensing, or delivering prescription-only drugs.
- (b) Any disclaimer, limitation, or waiver in violation of this section is void.

(c) Any attempt to make any disclaimer, limitation, or waiver in violation of this section is a violation of this subchapter.

History. Acts 2001, No. 1411, § 6.

17-92-1007. Enforcement.

Any violation of this subchapter is an unconscionable act or practice under § 4-88-107.

History. Acts 2001, No. 1411, § 7.

SUBCHAPTER 11 — PRESCRIPTION DRUG REDISPENSING PROGRAM

SECTION.

- 17-92-1101. Purpose.
- 17-92-1102. Definitions.
- 17-92-1103. Prescription drug redispensing program.
- 17-92-1104. Donations of unused prescription drugs.

SECTION.

- 17-92-1105. Sample drug use not restricted.
- 17-92-1106. Resale prohibited.
- 17-92-1107. Applicability.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-6 may not apply to this subchapter which was enacted subsequently.

17-92-1101. Purpose.

It is the purpose of this subchapter to:

- (1) Improve the health of needy Arkansans through a prescription drug redispensing program that authorizes charitable clinic pharmacies to redispense medicines that would otherwise be destroyed; and
- (2) Reaffirm the existing broad latitude of the Arkansas State Board of Pharmacy to protect the safety of the prescription drug supply in this state.

History. Acts 2005, No. 162, § 1.

17-92-1102. Definitions.

As used in this subchapter:

- (1) “Charitable clinic” means a charitable nonprofit corporation or a facility organized as a not-for-profit corporation under §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 that:

- (A) Holds a valid exemption from federal income taxation issued pursuant to section 501(a) of the Internal Revenue Code;
- (B) Is listed as an exempt organization under section 501(c)(3) of the Internal Revenue Code;

(C) Provides advice, counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or maintenance of health on an outpatient basis for a period of less than twenty-four (24) consecutive hours to persons not residing or confined at the facility;

(D) May charge an administrative fee or request a donation not to exceed ten dollars (\$10.00) per visit; and

(E) Has a licensed outpatient pharmacy;

(2) "Charitable clinic pharmacy" means the practice of a pharmacy at a site where prescriptions are dispensed by a charitable clinic free of charge to appropriately screened and qualified indigent patients;

(3) "Controlled substances" means substances defined by the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510;

(4) "Indigent" means a person with an income that is below two hundred percent (200%) of the federal poverty level;

(5) "Nursing facility" means the same as under § 20-10-1401;

(6)(A)(i) "Prescription drug" means a drug limited by section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., to being dispensed by or upon a medical practitioner's prescription because the drug is:

(a) Habit-forming;

(b) Toxic or having potential for harm; or

(c) Limited in its use to use under a practitioner's supervision by the new drug application for the drug.

(ii) The product label of a legend drug is required to contain the statement:

(a) "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT A PRESCRIPTION"; or

(b) "Rx only".

(iii) The drug is subject to the requirement of section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act which shall be exempt from section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., if certain specified conditions are met.

(B) "Prescription drug" does not include controlled substances; and

(7) "Properly transferred" means the storage, handling, and distribution of the drug under this subchapter in:

(A) Accordance with the label; and

(B) Its dispensed, sealed, tamper-evident single-user unit.

History. Acts 2005, No. 162, § 1. referred to in (1)(A) and (B), are codified
U.S. Code. Sections 501(a) and as 26 U.S.C. §§ 501(a) and 501(c)(3) re-
 501(c)(3) of the Internal Revenue Code, spectively.

17-92-1103. Prescription drug redispensing program.

(a) The prescription drug redispensing program established by this subchapter shall be a pilot program to determine the efficacy of redispensing prescription drugs to indigent patients.

(b) In cooperation with the Department of Health and the Department of Human Services, the Arkansas State Board of Pharmacy shall

develop and implement the program consistently with public health and safety through which unused prescription medications other than controlled substances may be transferred from a nursing facility to a charitable clinic pharmacy for the purpose of distributing the medication to Arkansas residents who are indigent.

(c) In cooperation with the Department of Health and the Department of Human Services, the board shall monitor the program and submit to the General Assembly two (2) reports along with any recommendations or findings, as follows:

(1) The first report shall be submitted on or before January 1, 2006; and

(2) The second report shall be submitted on or before October 1, 2006.

(d) Participation in the program by any entity, including individuals, pharmacies, charitable clinics, charitable clinic pharmacies, nursing facilities, and drug manufacturers, shall be voluntary.

History. Acts 2005, No. 162, § 1.

17-92-1104. Donations of unused prescription drugs.

(a)(1) A charitable clinic may accept for redispensing prescription drugs obtained from a nursing facility by the clinic pharmacy for relabeling and dispensing free of charge and pursuant to a valid prescription order to an indigent patient.

(2) The donor patient shall be considered to be the owner of the prescription drug and entitled to donate the prescription drug for use by a charitable clinic.

(b)(1)(A)(i) Any nursing home may enter into a contract with any charitable clinic for the transfer of prescription drugs under this section.

(ii) No prescription drugs may be transferred without a contract.

(B) A contract entered into under subdivision (b)(1)(A) of this section shall:

(i) Be approved by the Arkansas State Board of Pharmacy, in cooperation with the Department of Health and the Department of Human Services; and

(ii) Set out procedures for ensuring a safe chain of custody to protect the safety of all transferred drugs.

(C) The contract may specify that the charitable clinic will:

(i) Define a specified set of prescription drugs that will be transferred from the nursing home to the charitable clinic;

(ii) Request from time to time the transfer of particular prescription drugs;

(iii) Receive all the prescription drugs that the nursing home is authorized to transfer under this section; or

(iv) Make such other provisions as may be approved by the board.

(2) The pharmacist-in-charge at the charitable clinic shall be responsible for determining the description of the prescription drugs that will be included in the contract.

(c) Donations of prescription drugs to a charitable clinic pharmacy shall meet the following requirements:

(1)(A) The charitable clinic pharmacy accepts the prescription drugs only in their original sealed and tamper-evident packaging.

(B) However, the charitable clinic pharmacy may accept prescription drugs packaged in single-unit doses or blister packs with the outside packaging opened if the single-unit dose packaging remains intact;

(2) A pharmacist of the charitable clinic pharmacy determines that the prescription drug is not adulterated or misbranded and is safe to dispense;

(3) No product of which the integrity cannot be assured is accepted for redispensing by the pharmacist of the charitable clinic pharmacy;

(4) The prescription drugs are physically transferred from the nursing facility to a charitable clinic pharmacy by a person authorized by the board to pick up the prescription drugs for the charitable clinic;

(5)(A) The donor executes a form stating that the donor is authorized to donate the prescription drugs and intends to voluntarily donate them to a charitable clinic pharmacy.

(B) The nursing facility retains the donor form along with other acquisition records;

(6) The donor patient's name, prescription number, and any other identifying marks are obliterated from the packaging before the nursing facility sends the prescription drug to the charitable clinic;

(7) The drug name, strength, and expiration date remain on the prescription drug package label;

(8) The redispensed prescription drug is assigned the same expiration date as on the original package;

(9) Expired prescription drugs accepted by a charitable clinic pharmacy are not redispensed and are destroyed according to the charitable clinic pharmacy's destruction procedures; and

(10) The charitable clinic pharmacy accepts no controlled substances.

(d)(1) If a nursing facility that releases prescription drugs to a charitable clinic receives notice from a pharmacy that a prescription drug has been recalled, the nursing facility shall inform the clinic of the recall.

(2) If a charitable clinic receives a recall notification from a nursing facility, the clinic shall perform a uniform destruction of all of the recalled prescription drug in the facility.

(e) No prescription drug dispensed through a charitable clinic pharmacy shall be eligible for reimbursement from the state Medicaid program.

(f) Indigent patients receiving prescription drugs through the prescription drug redispensing program shall sign a waiver form releasing the nursing facility, the donor, and the donor's estate from liability.

(g) The board shall promulgate rules to develop:

(1) Forms and procedures for authorizations and certifications required under subdivision (c)(4) of this section;

(2) The donor consent form required under subdivision (c)(5) of this section;

(3) The waiver forms required under subsection (f) of this section; and

(4)(A) Specific requirements for a charitable clinic pharmacy or other specialty pharmacy for the medically indigent as defined by rules of the board to qualify for participation in and to participate in the prescription drug redispensing program.

(B) On request, the board shall provide the information required under subdivision (g)(4)(A) of this section to charitable clinics.

(h)(1) The following persons and entities that participate in the prescription drug redispensing program shall not be subject to any professional disciplinary action or criminal prosecution for actions taken under the prescription drug redispensing program:

(A) The donor and the donor's estate;

(B) A nursing facility;

(C) The prescribing physician, physician's assistant, registered nurse, advanced practice nurse, or nurse practitioner;

(D) Pharmacists and pharmacy technicians except when the board has promulgated regulations dealing specifically with the prescription drug redispensing program;

(E) The charitable clinic;

(F) The Department of Health;

(G) The Department of Human Services; or

(H) The board.

(2) Participation in the prescription drug redispensing program shall not be used as an independent basis for a claim of liability in tort or other civil action against any person or entity, including, but not limited to:

(A) The donor and the donor's estate;

(B) A nursing facility;

(C) The prescribing physician, physician's assistant, nurse practitioner, or nurse;

(D) The charitable clinic;

(E) The charitable clinic pharmacy acting in conformity with board regulations;

(F) The pharmacist who originally dispensed the donated prescription drugs acting in conformity with board regulations;

(G) A pharmacist dispensing donated prescription drugs acting in conformity with board regulations;

(H) The Department of Health;

(I) The Department of Human Services; or

(J) The board.

(3)(A) In the absence of bad faith, a prescription drug manufacturer shall not be subject to criminal prosecution or liability in tort or other

civil action for injury, death, or loss to person or property for matters related to the donation, acceptance, or dispensing of a prescription drug manufactured by the prescription drug manufacturer that is donated by any person under the prescription drug redispensing program, including, but not limited to, liability for failure to provide:

- (i) Product or consumer package insert information; or
- (ii) The expiration date of the donated prescription drug.

(B) Subdivision (h)(3)(A) of this section does not apply to a previously undisclosed product defect.

History. Acts 2005, No. 162, § 1.

17-92-1105. Sample drug use not restricted.

Nothing in this subchapter shall restrict the use of samples by a physician or advanced practice nurse during the course of working at a charitable clinic whether or not the clinic has a licensed outpatient pharmacy.

History. Acts 2005, No. 162, § 1.

17-92-1106. Resale prohibited.

Nothing in this subchapter shall be construed to provide for the resale of prescription drugs by any person or entity.

History. Acts 2005, No. 162, § 1.

17-92-1107. Applicability.

Nothing in this subchapter applies to any questions of liability arising outside the scope of the prescription drug redispensing program.

History. Acts 2005, No. 162, § 1.

SUBCHAPTER 12 — ARKANSAS PHARMACY AUDIT BILL OF RIGHTS

SECTION.

17-92-1201. Arkansas Pharmacy Audit
Bill of Rights.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-6 may not apply to this subchapter which was enacted subsequently.

17-92-1201. Arkansas Pharmacy Audit Bill of Rights.

(a) This subchapter shall be known and may be cited as the “Arkansas Pharmacy Audit Bill of Rights”.

(b) Notwithstanding any other law, when an audit of the records of a pharmacy is conducted by a managed care company, an insurance company, a third-party payor, or any entity that represents such companies or groups, the audit shall be conducted in accordance with the following bill of rights:

(1) The entity conducting the initial on-site audit shall give the pharmacy notice at least one (1) week before conducting the initial on-site audit for each audit cycle;

(2) Any audit that involves clinical or professional judgment shall be conducted by or in consultation with a pharmacist;

(3)(A)(i) Any clerical or recordkeeping error, such as a typographical error, scrivener’s error, or computer error, regarding a required document or record shall not in and of itself constitute fraud.

(ii) However, a claim arising under subdivision (b)(3)(A)(i) of this section may be subject to recoupment.

(B) No claim arising under subdivision (b)(3)(A)(i) of this section shall be subject to criminal penalties without proof of intent to commit fraud;

(4) A pharmacy may use the records of a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug;

(5)(A) A finding of an overpayment or underpayment may be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs.

(B) However, recoupment of claims under subdivision (b)(5)(A) of this section shall be based on the actual overpayment unless the projection for overpayment or underpayment is part of a settlement by the pharmacy;

(6) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(7) A pharmacy shall be allowed at least thirty (30) days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit;

(8) The period covered by an audit shall not exceed twenty-four (24) months from the date the claim was submitted to or adjudicated by a managed care company, an insurance company, a third-party payor, or any entity that represents such companies or groups;

(9) Unless otherwise consented to by the pharmacy, an audit shall not be initiated or scheduled during the first seven (7) calendar days of any month due to the high volume of prescriptions filled during that time;

(10)(A) The preliminary audit report shall be delivered to the pharmacy within one hundred twenty (120) days after conclusion of the audit.

(B) A final audit report shall be delivered to the pharmacy within six (6) months after receipt of the preliminary audit report or the final appeal as provided for in subsection (c) of this section, whichever is later; and

(11)(A) The audit criteria set forth in this subsection shall apply only to audits of claims submitted for payment after January 1, 2008.

(B) Notwithstanding any other provision in this subsection, the agency conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits.

(c) Recoupments of any disputed funds shall only occur after final internal disposition of the audit, including the appeals process as set forth in subsection (d) of this section.

(d)(1) Each entity conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity.

(2) If, following the appeal, the entity finds that an unfavorable audit report or any portion of the unfavorable audit report is unsubstantiated, the entity shall dismiss the audit report or the unsubstantiated portion of the audit report without any further proceedings.

(e) Each entity conducting an audit shall provide a copy of the final audit report to the plan sponsor after completion of any review process.

(f) This section does not apply to any audit, review, or investigation that involves alleged fraud, willful misrepresentation, or abuse, including without limitation:

- (1) Medicaid fraud as defined in § 5-55-111;
- (2) Abuse or fraud as defined in § 20-77-1702; or
- (3) Insurance fraud.

History. Acts 2007, No. 843, § 1.

CHAPTER 93

PHYSICAL THERAPISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF PHYSICAL THERAPY.
3. LICENSING.
4. ATHLETIC TRAINERS.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-3 may not apply to subchapter 4 which was enacted subsequently.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-92-101 et seq.

RESEARCH REFERENCES

ALR. Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th

132.

Licensing and regulation of practice of physical therapy. 8 A.L.R.5th 825.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., § 10 and § 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-93-101. Short title.

17-93-102. Definitions.

SECTION.

17-93-103. Penalties.

Effective Dates. Acts 1959, No. 141, § 18; Mar. 3, 1959. Emergency clause provided: "It is hereby declared that the practice of physical therapy is a branch of the healing arts; that untrained and unqualified persons can and do cause grave public danger through the unauthorized practice of physical therapy; that the present laws of this state are not adequate to protect the public from injury and harm; that it is necessary for the preservation of the peace, health, and safety of the inhabitants of the State of Arkansas that the provisions of this act shall take effect at the earliest possible time. Therefore, an emergency is declared to exist and this act shall take effect immediately and be in full force and effect upon its passage and approval."

Acts 1979, No. 631, § 12; Mar. 28, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that practice as a physical therapist assistant is a growing and important part of the practice of physical therapy, which is a branch of the healing arts; that trained and qualified assistants are necessary for the provision of physical therapy to the citizens of the state; that

untrained and unqualified persons can and do cause grave public danger through practice as physical therapist assistants; that the present laws of this state are not adequate to protect the public from injury and harm and still provide recognition for qualified physical therapist assistants and that this act is designed to alleviate this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1232, § 7; July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that this legislation creates a new board to regulate, license and examine physical therapists, that the State Board of Physical Therapy should begin operations at the beginning of the next fiscal year; that the next fiscal year begins on July 1, 1991. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on July 1, 1991."

17-93-101. Short title.

This chapter shall be cited as the "Arkansas Physical Therapy Act".

History. Acts 1959, No. 141, § 17;
A.S.A. 1947, § 72-1332.

17-93-102. Definitions.

As used in this chapter:

(1)(A) "Consultation by means of telecommunication" means the rendering of a professional opinion, expert opinion, or advice by a physical therapist to another physical therapist or health care provider through telecommunication technology.

(B) "Consultation by means of telecommunication" includes the review or transfer of patient records or related information through telecommunication technology;

(2) "Direct supervision" means that the supervising therapist is on-site and available for consultation;

(3) "Physical therapist" means a person who practices physical therapy as defined in this chapter after he or she has:

(A) Successfully completed a curriculum of physical therapy accredited by a national accreditation agency approved by the Arkansas State Board of Physical Therapy; and

(B) Passed a nationally recognized licensing examination;

(4) "Physical therapist assistant" means a person who is licensed under this chapter and who assists the physical therapist in selected components of the physical therapy treatment intervention;

(5) "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist who is licensed under this chapter;

(6) "Physical therapy aide" means an unlicensed member of the physical therapy team who may perform treatments under the direct supervision of a physical therapist or physical therapist assistant;

(7) "Practice of physical therapy" means:

(A) Examining and evaluating patients with mechanical, physiological, and developmental impairments, functional limitations, and disability or other health-related conditions in order to determine a physical therapy diagnosis, prognosis, and planned therapeutic intervention;

(B)(i) Alleviating impairments and functional limitations by designing, implementing, and modifying therapeutic interventions that include:

(a) Therapeutic exercise;

(b) Functional training in self-care as it relates to patient mobility and community access;

(c) Manual therapy techniques, including soft tissue massage, manual traction, connective tissue massage, therapeutic massage, and mobilization, i.e., passive movement accomplished within normal

range of motion of the joint, but excluding spinal manipulation and adjustment;

(d) Assistive and adaptive devices and equipment as they relate to patient mobility and community access;

(e) Physical agents;

(f) Mechanical and electrotherapeutic modalities; and

(g) Patient-related instruction.

(ii) The therapeutic intervention of bronchopulmonary hygiene and debridement of wounds require a physician referral before initiation of treatment.

(iii) Physical therapy does not include radiology or electrosurgery;

(C) Preventing injury, impairments, functional limitations, and disability, including the promotion and maintenance of fitness, health, and quality of life in all age populations; and

(D) Engaging in consultation, testing, education, and research;

(8)(A) "Supervision" means that the supervising therapist retains moral, ethical, and legal responsibility for patient care and is readily available for consultation.

(B) The supervising therapist is not required to be on-site but must be at least available by telecommunication; and

(9) "Telecommunication" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point or between or among points.

History. Acts 1959, No. 141, § 1; 1979, No. 631, § 1; 1981, No. 470, § 1; A.S.A. 1947, § 72-1317; Acts 1991, No. 1232, § 1; 1997, No. 744, § 1; 2001, No. 1412, § 1; 2009, No. 1471, § 2.

A.C.R.C. Notes. Acts 2009, No. 1471, § 1, provided: "Legislative Intent. It is the intent of the General Assembly to protect the public health, safety, and welfare and provide for state administrative control, supervision, licensure, and regulation of

the practice of physical therapy. It is the intent of the General Assembly that only individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accomplish the purpose stated herein."

Amendments. The 2009 amendment rewrote the section.

CASE NOTES

Illegal Practice of Chiropractic.

Physical therapist's treatments, which caused his patients' spines to "pop," did not fall under the Arkansas Chiropractic Practices Act's physical therapy exemption, § 17-81-302(3), as physical therapy is defined in subdivision (6) (now (5)) of this section as passive movement within the joint's normal range of motion, "ex-

cluding spinal manipulation." *Teston v. Ark. State Bd. of Chiropractic Examiners*, 361 Ark. 300, 206 S.W.3d 796 (2005), cert. denied, *Teston v. Ark. State Bd. of Chiropractic Exam'rs*, 546 U.S. 960, 126 S. Ct. 480, 163 L. Ed. 2d 363 (2005).

Cited: *Board of Trustees v. Professional Therapy Servs., Inc.*, 873 F. Supp. 1280 (W.D. Ark. 1995).

17-93-103. Penalties.

- (a) Any person violating the provisions of this chapter shall be guilty of a Class B misdemeanor.
- (b) Each day of violation shall constitute a separate offense.

History. Acts 1959, No. 141, § 14; 1979, No. 631, § 9; A.S.A. 1947, § 72-1330; Acts 2005, No. 1994, § 402.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF PHYSICAL THERAPY

SECTION.
17-93-201. Creation — Members.
17-93-202. Powers and duties.

SECTION.
17-93-203. Disposition of funds.

A.C.R.C. Notes. Acts 1991, No. 1232, § 3, provided: “The Arkansas State Medical Board, upon the effective date of this act, shall transmit to the Arkansas State Board of Physical Therapy all records kept and maintained by the Arkansas State Medical Board pertaining to the practice of physical therapy in this state.”

Cross References. Board members not to be held personally liable for actions as board members, § 17-80-103.

Effective Dates. Acts 1959, No. 141, § 18: Mar. 3, 1959. Emergency clause provided: “It is hereby declared that the practice of physical therapy is a branch of the healing arts; that untrained and unqualified persons can and do cause grave public danger through the unauthorized practice of physical therapy; that the present laws of this state are not adequate to protect the public from injury and harm; that it is necessary for the preservation of the peace, health, and safety of the inhabitants of the State of Arkansas that the provisions of this act shall take effect at the earliest possible time. Therefore, an emergency is declared to exist and this act shall take effect immediately and be in full force and effect upon its passage and approval.”

Acts 1973, No. 139, § 5: Feb. 16, 1973. Emergency clause provided: “It is hereby found and determined by the General Assembly that there is a shortage of qualified physical therapists in the State of Arkansas, that in order to protect the public health, safety and welfare immediate steps should be taken to clarify and

improve the methods of licensing physical therapists, and the immediate passage of this act is necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1979, No. 631, § 12: Mar. 28, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that practice as a physical therapist assistant is a growing and important part of the practice of physical therapy, which is a branch of the healing arts; that trained and qualified assistants are necessary for the provision of physical therapy to the citizens of the state; that untrained and unqualified persons can and do cause grave public danger through practice as physical therapist assistants; that the present laws of this state are not adequate to protect the public from injury and harm and still provide recognition for qualified physical therapist assistants and that this act is designed to alleviate this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113

exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6, and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1232, § 7: July 1, 1991. Emergency clause provided: "It is hereby

found and determined by the Seventy-Eighth General Assembly that this legislation creates a new board to regulate, license and examine physical therapists, that the State Board of Physical Therapy should begin operations at the beginning of the next fiscal year; that the next fiscal year begins on July 1, 1991. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on July 1, 1991."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-93-201. Creation — Members.

(a)(1) There is created the Arkansas State Board of Physical Therapy which shall consist of five (5) members to be appointed by the Governor for terms of three (3) years.

(2) Four (4) members shall be physical therapists licensed to practice in Arkansas with at least five (5) years' experience as a physical therapist. The Governor shall appoint one (1) physical therapist from each congressional district in order to provide statewide representation of physical therapists.

(3) One (1) member shall not be actively engaged in or retired from the practice of physical therapy and shall serve as the representative of the public interest.

- (b) A member shall hold his or her office until his or her successor has been appointed and qualified.
- (c) The board shall meet at least two (2) times a year and may hold additional meetings whenever necessary to discharge its duties.
- (d) The board shall elect annually from its membership a chair and a secretary.
- (e) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1959, No. 141, §§ 2, 4, 5; 1979, No. 631, § 2; A.S.A. 1947, §§ 72-1318, 72-1320, 72-1321; Acts 1991, No. 1232, § 2; 1995, No. 742, § 1; 1997, No. 250, § 165; 2001, No. 1412, § 2.

Publisher's Notes. Acts 1991, No. 1232, § 2, provided, in part, that of the initial members of the board, appointed by the Governor, one (1) member will serve one (1) year, two (2) members will serve two (2) years, and two (2) members will serve three (3) years.

17-93-202. Powers and duties.

- (a) The Arkansas State Board of Physical Therapy shall:
 - (1) Pass upon the qualifications of applicants for licensure of physical therapists and physical therapist assistants;
 - (2) Provide for the examinations of physical therapists and physical therapist assistants;
 - (3) Determine the applicants who successfully pass the examinations; and
 - (4) License applicants who meet the qualifications provided in this chapter.
- (b) In addition to other powers and duties set forth in this chapter, the board shall:
 - (1) Adopt reasonable rules and require the payment of license fees adequate to carry out the purposes of this chapter;
 - (2) Investigate reported violations of this chapter and take such steps as may be necessary to enforce this chapter;
 - (3) Keep a record of its proceedings; and
 - (4)(A) Compile and maintain a list of all licensed physical therapists and physical therapist assistants in the State of Arkansas.
 - (B) The board shall furnish a copy of the list to all persons requesting it upon the payment of such fee as may be fixed by the board to compensate for the cost of printing the list.
- (c) In addition to other powers and duties set forth in this chapter, the board may:
 - (1) Establish mechanisms for assessing the continuing competence of physical therapists and physical therapist assistants to practice physical therapy;
 - (2) Report final disciplinary action taken against a licensee to a national disciplinary database recognized by the board if required by law;
 - (3) Report information of alleged unlawful conduct by licensees, unlicensed individuals, and other health care providers and entities to the appropriate county, state, or federal authority; and

(4) Publish a report at least annually of all final disciplinary actions taken against licensees of the board.

History. Acts 1959, No. 141, § 3; 1973, No. 139, § 1; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-1319; Acts 1991, No. 1232, § 2; 2001, No. 1412, § 3; 2009, No. 1471, § 3.

A.C.R.C. Notes. Acts 2009, No. 1471, § 1, provided: “Legislative Intent. It is the intent of the General Assembly to protect the public health, safety, and welfare and provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the General Assembly that only individuals who meet and maintain pre-

scribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accomplish the purpose stated herein.”

Publisher’s Notes. Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

Amendments. The 2009 amendment rewrote (a)(2), (b)(3), and (b)(4)(A); added (c); and made minor stylistic changes.

17-93-203. Disposition of funds.

(a)(1) All fees and other moneys received by the Arkansas State Board of Physical Therapy under this chapter shall be deposited into a financial institution in this state and expended solely for the purposes of this chapter.

(2) No part of these funds shall revert to the general funds of this state.

(b)(1) The compensation provided by this chapter and all expenses incurred under this chapter shall be paid from these funds.

(2) No compensation or expenses incurred under this chapter shall be a charge against the general funds of this state.

(c) The board shall file an annual report of its activities with the Department of Finance and Administration, and the report shall include a statement of all receipts and disbursements.

History. Acts 1991, No. 1232, § 2; 2009, No. 1471, § 3.

A.C.R.C. Notes. Acts 1991, No. 1232, § 2, provided: “The Arkansas State Medical Board shall remit all funds collected pertaining to the licensure and examination of physical therapists and physical therapist assistants to the Arkansas State Board of Physical Therapy upon the effective date of this act.”

Acts 2005, No. 231, § 4, provided: “DISBURSEMENT OF FUNDS. No monies collected by the Arkansas State Board of Physical Therapy or funds authorized by this Act, shall be disbursed except by a member of the State Board of Physical Therapy designated as the Board’s Dis-

bursing Officer.”

Acts 2009, No. 1471, § 1, provided: “Legislative Intent. It is the intent of the General Assembly to protect the public health, safety, and welfare and provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the General Assembly that only individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accomplish the purpose stated herein.”

Amendments. The 2009 amendment

substituted "Department of Finance and Administration" for "Governor" in (c); and made a minor stylistic change in (a)(1).

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-93-301. License required — Exceptions.
- 17-93-302. Unlawful practice — Injunction.
- 17-93-303. Physical therapists.
- 17-93-304. Physical therapist assistants.
- 17-93-305. [Repealed.]
- 17-93-306. Endorsement.
- 17-93-307. Display of license.
- 17-93-308. Revocation, suspension, or denial — Grounds.

SECTION.

- 17-93-309. Revocation, suspension, or denial — Proceedings.
- 17-93-310. Fee sharing prohibited.
- 17-93-311. Civil penalties.
- 17-93-312. Continuing education requirements.
- 17-93-313. Notice of malpractice claim or suit.
- 17-93-314. Applicability to other licensed persons.

Cross References. Continuing education requirements, § 17-80-104.

Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1959, No. 141, § 18: Mar. 3, 1959. Emergency clause provided: "It is hereby declared that the practice of physical therapy is a branch of the healing arts; that untrained and unqualified persons can and do cause grave public danger through the unauthorized practice of physical therapy; that the present laws of this state are not adequate to protect the public from injury and harm; that it is necessary for the preservation of the peace, health, and safety of the inhabitants of the State of Arkansas that the provisions of this act shall take effect at the earliest possible time. Therefore, an emergency is declared to exist and this act shall take effect immediately and be in full force and effect upon its passage and approval."

Acts 1973, No. 139, § 5: Feb. 16, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is a shortage of qualified physical therapists in the State of Arkansas, that in order to protect the public health, safety and welfare immediate steps should be taken to clarify and improve the methods of licensing physical therapists, and the immediate passage of this act is necessary to accomplish this purpose. Therefore, an emergency is

hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 631, § 12: Mar. 28, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that practice as a physical therapist assistant is a growing and important part of the practice of physical therapy, which is a branch of the healing arts; that trained and qualified assistants are necessary for the provision of physical therapy to the citizens of the state; that untrained and unqualified persons can and do cause grave public danger through practice as physical therapist assistants; that the present laws of this state are not adequate to protect the public from injury and harm and still provide recognition for qualified physical therapist assistants and that this act is designed to alleviate this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 503, § 4: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain fees charged by the State Medical Board for examinations and for licensing and reregistration of certain professions are inadequate to cover the

costs incurred by the board in administering such examinations and issuing and renewing certain licenses; that it is essential that revenues derived from fees produce sufficient funds to cover the expenses of the board; that this Act is designed to increase some of such charges and to

thereby produce the necessary funds and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-93-301. License required — Exceptions.

(a)(1) Unless physical therapy services are provided by or under the direction of a person licensed by the Arkansas State Board of Physical Therapy under this chapter, it is unlawful for a person to:

(A) Practice physical therapy;

(B) Profess to be a physical therapist, physiotherapist, or physical therapy technician; or

(C) Use:

(i) The words "physical therapy", "physical therapist", "physiotherapist", "registered physical therapist", or "doctor of physical therapy";

(ii) The initials "P.T.", "D.P.T.", "L.P.T.", or "R.P.T."; or

(iii) Other letters, words, abbreviations, or insignia indicating or implying that the person is providing physical therapy services.

(2) A person or entity shall not advertise or otherwise promote a person as being a physical therapist or physiotherapist unless the person being advertised or promoted is licensed under this chapter.

(3) A person or entity that offers, provides, or bills an individual for services shall not characterize the services provided as physical therapy unless the person performing the services is licensed as a physical therapist under this chapter.

(b) A person shall not use the title "physical therapist assistant", the letters "P.T.A", or any other words, abbreviations, or insignia in connection with the person's name to indicate or imply that the person is a physical therapist assistant unless the person is licensed as a physical therapist assistant under this chapter.

(c) The following persons are exempt from the licensure requirements of this chapter when engaged in the following activities:

(1) A person in an entry-level professional education program approved by the board who is:

(A) Satisfying supervised clinical education requirements related to the person's physical therapist education; and

(B) Under onsite supervision of a licensed physical therapist;

(2) A physical therapist who is practicing in the United States armed services, United States Public Health Service, or United States Department of Veterans Administration under federal regulations for state licensure of health care professionals;

(3) A physical therapist who is licensed in another jurisdiction of the United States or credentialed to practice physical therapy in another country if the physical therapist is:

(A) Teaching, demonstrating, or providing physical therapy services in connection with teaching; or

(B) Participating in an education seminar of no more than sixty (60) days in a calendar year;

(4) A physical therapist who is licensed in another jurisdiction of the United States if the physical therapist is providing consultation by means of telecommunication to a physical therapist licensed by the board under this chapter;

(5) A physical therapist who is licensed in a jurisdiction of the United States or credentialed in another country, if the physical therapist is providing physical therapy by contract or employment to individuals affiliated with or employed by an established athletic team, athletic organization, or performing arts company that is temporarily practicing, competing, or performing in the state for no more than sixty (60) days in a calendar year;

(6)(A) A physical therapist who is licensed in a jurisdiction of the United States and who enters this state to provide physical therapy during a declared local, state, or national disaster or emergency.

(B) The exemption under subdivision (c)(6)(A) of this section is applicable for only sixty (60) days following the declaration of the disaster or emergency.

(C) In order to be eligible for this exemption, the physical therapist shall notify the board of his or her intent to practice physical therapy in this state under subdivision (c)(6)(A) of this section;

(7)(A) A physical therapist licensed in a jurisdiction of the United States who seeks to practice physical therapy in this state because he or she is forced to leave his or her residence or place of employment due to a declared local, state, or national disaster or emergency.

(B) The exemption under subdivision (c)(7)(A) of this section is applicable for only sixty (60) days following the declaration of the disaster or emergency.

(C) In order to be eligible for this exemption, the physical therapist shall notify the board of his or her intent to practice physical therapy in this state under subdivision (c)(7)(A) of this section; and

(8) A physical therapist assistant who is licensed in a jurisdiction of the United States and is assisting a physical therapist engaged in physical therapy services under the exemption in subdivisions (c)(2), (c)(3), (c)(5), (c)(6), and (c)(7) of this section.

History. Acts 1959, No. 141, § 14; 1979, No. 631, § 9; A.S.A. 1947, § 72-1330; Acts 2001, No. 1412, § 4; 2009, No. 1471, § 4.

A.C.R.C. Notes. Acts 2009, No. 1471, § 1, provided: "Legislative Intent. It is the intent of the General Assembly to protect

the public health, safety, and welfare and provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the General Assembly that only individuals who meet and maintain prescribed standards of competence and con-

duct may engage in the practice of physical therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accom-

plish the purpose stated herein.”

Amendments. The 2009 amendment rewrote the section.

CASE NOTES

Cited: Board of Trustees v. Professional Therapy Servs., Inc., 873 F. Supp. 1280 (W.D. Ark. 1995).

17-93-302. Unlawful practice — Injunction.

The courts of record in this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of physical therapy in the county in which the alleged unlawful practice occurred or in which the defendant resides. The issuance of an injunction shall not relieve a person from criminal prosecution for violation of this chapter, but the remedy of injunction shall be in addition to liability for criminal prosecution.

History. Acts 1959, No. 141, § 15; A.S.A. 1947, § 72-1331.

17-93-303. Physical therapists.

(a)(1) The Arkansas State Board of Physical Therapy shall license as a physical therapist each applicant who proves to the satisfaction of the board his or her fitness for licensure under the terms of this chapter.

(2) The license shall be prima facie evidence of the right of that person to practice physical therapy subject to the conditions and limitations of this chapter.

(b) Each physical therapist applicant shall:

(1) Be at least twenty-one (21) years of age;

(2) Be of good moral character;

(3) Have graduated from a school of physical therapy accredited by a national accreditation agency approved by the board;

(4) Have passed examinations selected and approved by the board; and

(5) Submit fees as determined by the board.

(c)(1) Upon payment of the fees, applicants shall be given examinations on the following subjects: the applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics, neurology, orthopedics, pediatrics, surgery, medical ethics, and technical procedures in the practice of physical therapy as defined in this chapter, and any other subjects the board considers necessary or desirable.

(2) The national examination shall test entry-level competency related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention, and consultation.

(3)(A)(i) Upon payment of all appropriate fees, applicants who do not pass the examination after the first attempt may retake the examination one (1) additional time without reapplication for licensure.

(ii) The reexamination must take place within six (6) months after the first failure.

(B) Before being approved by the board for subsequent testing beyond two (2) attempts, the applicant shall reapply and demonstrate evidence satisfactory to the board of having successfully completed additional clinical training or course work, or both, as determined by the board.

(d)(1)(A) A license fee or renewal fee in an amount to be determined by the board shall be paid annually by each physical therapist who holds a license to practice physical therapy in the State of Arkansas.

(B) The renewal fee shall be paid no later than March 1 of each year.

(2) Failure to renew the license and pay the fee by March 1 shall cause the license of any person who fails to renew to expire automatically.

(3) A delinquent licensee may be reinstated by paying all delinquent fees and a penalty in an amount to be determined by the board for each year or part of a year he or she has been delinquent.

(e) An applicant for a license as a physical therapist who has been educated outside the United States shall:

(1) Complete the application process, including payment of fees;

(2) Provide written proof that the applicant's school of physical therapy is recognized by its own ministry of education or equivalent agency;

(3) Undergo a credentials evaluation as directed by the board to determine that the applicant has met uniform criteria for educational requirements as further established by rules of the board;

(4) Complete any additional education required by the board;

(5) Pass the board-approved English proficiency examination if the applicant's native language is not English;

(6) Pass all examinations required by the board under this chapter; and

(7) Comply with all requirements in rules promulgated by the board.

History. Acts 1959, No. 141, §§ 6, 7, 11; 1973, No. 139, § 2; 1979, No. 631, § 3; A.S.A. 1947, §§ 72-1322, 72-1323, 72-1327; Acts 1987, No. 503, § 2; 1991, No. 303, §§ 1, 2; 1993, No. 1219, § 21; 1995, No. 742, § 2; 2001, No. 1412, § 5; 2009, No. 1471, § 5.

A.C.R.C. Notes. Acts 2009, No. 1471, § 1, provided: "Legislative Intent. It is the intent of the General Assembly to protect the public health, safety, and welfare and provide for state administrative control,

supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the General Assembly that only individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accomplish the purpose stated herein."

Amendments. The 2009 amendment rewrote (a) through (d); and added (e).

CASE NOTES

Cited: Board of Trustees v. Professional Therapy Servs., Inc., 873 F. Supp. 1280 (W.D. Ark. 1995).

17-93-304. Physical therapist assistants.

(a) The Arkansas State Board of Physical Therapy shall license as a physical therapist assistant and shall issue a license to a person who:

(1) Satisfactorily passes the examinations provided for in this chapter and otherwise meets the requirements for qualification under this chapter and pays the fees as determined by the board; or

(2) Was licensed under the rules of the Arkansas State Medical Board as a physical therapist assistant before March 28, 1979.

(b) Each physical therapist assistant applicant shall:

(1) Be at least eighteen (18) years of age;

(2) Be of good moral character;

(3) Have graduated from a school of physical therapy accredited by a national accreditation agency approved by the Arkansas State Board of Physical Therapy;

(4) Have passed examinations selected and approved by the Arkansas State Board of Physical Therapy; and

(5) Submit fees as determined by the Arkansas State Board of Physical Therapy.

(c)(1)(A) Upon payment of all appropriate fees, applicants who do not pass the examination after the first attempt may retake the examination one (1) additional time without reapplication for licensure.

(B) The reexamination must take place within six (6) months after the first failure.

(2) Before being approved by the Arkansas State Board of Physical Therapy for subsequent testing beyond two (2) attempts, the applicant shall reapply and demonstrate evidence satisfactory to the Arkansas State Board of Physical Therapy of having successfully completed additional clinical training or course work, or both, as determined by the Arkansas State Board of Physical Therapy.

(d)(1) A physical therapist assistant who is licensed under this chapter shall pay a license fee and annual renewal fee in an amount to be determined by the Arkansas State Board of Physical Therapy.

(2) The renewal fee shall be paid no later than March 1 of each year.

(3)(A) A failure to renew and pay the renewal fee by March 1 shall cause the license to expire automatically.

(B) A licensee whose license has expired for failure to meet the renewal date may be reinstated by paying all delinquent fees and a penalty in an amount to be determined by the Arkansas State Board of Physical Therapy for each year or part of a year that he or she has failed to renew.

History. Acts 1959, No. 141, §§ 6, 9; A.S.A. 1947, §§ 72-1322, 72-1325; Acts 1973, No. 139, § 2; 1979, No. 631, §§ 3, 5; 1991, No. 303, § 3; 2001, No. 1412, § 6;

2009, No. 1471, § 5.

A.C.R.C. Notes. Acts 2009, No. 1471, § 1, provided: "Legislative Intent. It is the intent of the General Assembly to protect the public health, safety, and welfare and provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the General Assembly that only

individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accomplish the purpose stated herein."

Amendments. The 2009 amendment rewrote (a) through (c); and added (d).

CASE NOTES

Cited: Board of Trustees v. Professional Therapy Servs., Inc., 873 F. Supp. 1280 (W.D. Ark. 1995).

17-93-305. [Repealed.]

A.C.R.C. Notes. Acts 2009, No. 1471, § 1, provided: "Legislative Intent. It is the intent of the General Assembly to protect the public health, safety, and welfare and provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the General Assembly that only individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physi-

cal therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accomplish the purpose stated herein."

Publisher's Notes. This section, concerning temporary permits, was repealed by Acts 2009, No. 1471, § 6. This section was derived from Acts 1959, No. 141, § 8; 1973, No. 139, § 3; 1979, No. 631, § 4; A.S.A. 1947, § 72-1324; Acts 2001, No. 1412, § 7.

17-93-306. Endorsement.

(a) The Arkansas State Board of Physical Therapy shall issue a license to an applicant who is a physical therapist or a physical therapist assistant and who has a current unrestricted license from another jurisdiction of the United States if the applicant has met all the qualifications for a license under this chapter at the time of the applicant's initial licensure.

(b) The issuance of a license by endorsement by the board shall be at the sole discretion of the board, and the board may provide such rules governing admission as it may deem necessary or desirable.

History. Acts 1959, No. 141, § 10; 1979, No. 631, § 6; A.S.A. 1947, § 72-1326; Acts 2009, No. 1471, § 7.

A.C.R.C. Notes. Acts 2009, No. 1471, § 1, provided: "Legislative Intent. It is the intent of the General Assembly to protect the public health, safety, and welfare and provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the General Assembly that only

individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accomplish the purpose stated herein."

Amendments. The 2009 amendment rewrote (a), and in (b), substituted "endorsement" for "reciprocity" and deleted "and regulations", changed the section

heading from "Endorsement" to "Reciprocity", and made related and minor stylistic changes.

17-93-307. Display of license.

Each licensee shall display his or her license and renewal certification in a conspicuous place in the principal office where he or she practices as a physical therapist or practices as a physical therapist assistant.

History. Acts 1973, No. 139, § 4; 1979, No. 631, § 10; A.S.A. 1947, § 72-1325.1.

17-93-308. Revocation, suspension, or denial — Grounds.

(a) After due notice and hearing, the Arkansas State Board of Physical Therapy may suspend, revoke, or refuse to issue or renew the license of a person licensed under this chapter, or take other appropriate action against a person licensed under this chapter, who:

(1) Practices as a physical therapist or works as a physical therapist assistant when his or her physical or mental abilities are impaired by the use of a controlled substance or other habit-forming drugs, chemicals, alcohol, or any other causes;

(2) Has been convicted of violating any state or federal narcotics law;

(3) Is, in the judgment of the board, guilty of immoral or unprofessional conduct;

(4) Has been convicted of a crime involving moral turpitude;

(5) Is guilty, in the judgment of the board, of gross negligence in his or her practice;

(6) Has obtained, or attempted to obtain, licensure by fraud or material misrepresentation;

(7) Has been declared insane by a court of competent jurisdiction and has not subsequently been lawfully declared sane;

(8) Has treated, or undertaken to treat, ailments of human beings otherwise than by physical therapy and as authorized by this chapter;

(9)(A) Engages, directly or indirectly, in the division, transferring, assigning, rebating, or refunding of fees received for professional services or gratuity with a physician or health care practitioner who referred a patient, or with a relative or business associate of the referring person, without appropriate disclosure to the patient so referred.

(B) This subdivision (a)(9) does not prohibit the members of any regularly and properly organized business entity recognized by Arkansas law and composed of physical therapists from making a division of their total fees among themselves as they determine by contract necessary to defray their joint operating costs.

(C) This subdivision (a)(9) shall not apply to any physical therapist employed by a licensed physician on July 15, 1991, during the term of such employment, nor shall it apply to physical therapy positions on the premises of Arkansas-licensed hospitals and nursing homes;

(10) Attempts to engage in conduct that subverts or undermines the integrity of the examination or the examination process, including without limitation:

(A) Utilizing in any manner recalled or memorized examination questions from or with a person or entity;

(B) Failing to comply with all test center security procedures;

(C) Communicating or attempting to communicate with other examinees during the test; or

(D) Copying or sharing examination questions or portions of questions;

(11) Has had any of the following disciplinary actions taken against him or her by the proper authorities of another state, territory, or country:

(A) A license revoked or suspended; or

(B) An application for licensure refused, revoked, or suspended;

(12)(A) Has been convicted of or pleaded guilty or nolo contendere to a felony in the courts of this state or any other state, territory, or country.

(B) As used in subdivision (a)(12)(A) of this section, "convicted" includes a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, admission of guilt, an Alford plea, or a plea of nolo contendere; and

(13) Is in violation of this chapter or any regulation promulgated by the board.

(b) The procedure in all disciplinary actions shall be as prescribed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and shall include the power to subpoena documents and people.

History. Acts 1959, No. 141, § 12; 1979, No. 631, § 7; A.S.A. 1947, § 72-1328; Acts 1991, No. 1011, § 1; 1995, No. 742, § 3; 2001, No. 1412, § 8; 2009, No. 1471, § 8.

A.C.R.C. Notes. Acts 2009, No. 1471, § 1, provided: "Legislative Intent. It is the intent of the General Assembly to protect the public health, safety, and welfare and provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the General Assembly that only individuals who meet and maintain pre-

scribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accomplish the purpose stated herein."

Amendments. The 2009 amendment inserted "issue or" in the introductory language of (a); rewrote (a)(1); substituted "licensure" for "registration" in (a)(6); inserted (a)(10) through (a)(12) and redesignated the subsequent subdivision accordingly; and made related and minor stylistic changes.

CASE NOTES

Suspension Proper.

There was substantial evidence to support the Arkansas State Board of Physical Therapy's decision to suspend physical therapist, with probation thereafter, where during the hearing, there was evidence produced that the physical thera-

pist and the patient engaged in kissing, hugging, and heavy petting during the course of her treatment, and there was also testimony that the physical therapist made very intimate and personal comments to the patient during treatment, and the two had intercourse within at

least two weeks of the patient's final therapy session. *Williams v. Ark. State Bd. of Physical Therapy*, 353 Ark. 778, 120 S.W.3d 581 (2003).

Cited: *Board of Trustees v. Professional Therapy Servs., Inc.*, 873 F. Supp. 1280 (W.D. Ark. 1995).

17-93-309. Revocation, suspension, or denial — Proceedings.

(a)(1) Any person may file a complaint with the Arkansas State Board of Physical Therapy against any person having a license to practice as a physical therapist or as a physical therapist assistant in this state charging that person with having violated the provisions of § 17-93-308.

(2) Once a complaint has been received in the board office, the board shall first send an advisory notice to the person allegedly committing the violation informing the person of the complaint and a statement notifying the person that the person must reply to the board.

(3) If the board determines that there is a reasonable belief that the accused may have been guilty of a violation of this chapter or the rules and regulations promulgated thereunder, or both, the board shall prepare an order and notice of hearing advising the person of the date for the hearing to be held by the board.

(b) All hearings and appeals shall be conducted in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1959, No. 141, § 13; 1979, No. 631, § 8; A.S.A. 1947, § 72-1329; Acts 2001, No. 1412, § 9.

RESEARCH REFERENCES

Ark. L. Rev. Rules of Evidence in Administrative Proceedings, 15 Ark. L. Rev. 138.

17-93-310. Fee sharing prohibited.

(a) It is unlawful for a physical therapist or any of his or her business associates to engage, directly or indirectly, in the division, transferring, assigning, rebating, or refunding of gratuities or fees received for professional services with any person who referred a patient or with any relative or business associate of the referring person.

(b) This section shall not apply to any physical therapist employed by a licensed physician or a group physician practice when the physical therapy services are performed within the same office, building, clinic, or physical facility as the referring physician's services are performed, nor shall it apply to physical therapy positions on the premises of Arkansas-licensed hospitals and nursing homes.

History. Acts 1993, No. 1210, § 1.

17-93-311. Civil penalties.

(a) After due notice and hearing, the Arkansas State Board of Physical Therapy is also authorized to levy a civil penalty against any person licensed under the provisions of this chapter after a finding that the person has violated any of the provisions of this chapter or any regulations promulgated by the board.

(b) Civil penalties assessed by the board shall be no more than one thousand dollars (\$1,000) per incident.

(c) In addition to any other sanctions authorized by this chapter, the board may impose a civil penalty as provided in this section against any unlicensed person practicing or offering to practice any actions requiring licensure pursuant to the provisions of this chapter.

History. Acts 1995, No. 742, § 4.

17-93-312. Continuing education requirements.

(a) All licensed physical therapists and licensed physical therapist assistants shall complete continuing education for licensure renewal as established in the rules of the Arkansas State Board of Physical Therapy.

(b)(1) The board shall approve continuing education units and their program content.

(2) The board may require the payment of reasonable fees for review and approval of continuing education programs.

History. Acts 1997, No. 744, § 2; 2009, No. 1471, § 9.

A.C.R.C. Notes. Acts 2009, No. 1471, § 1, provided: "Legislative Intent. It is the intent of the General Assembly to protect the public health, safety, and welfare and provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the General Assembly that only

individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accomplish the purpose stated herein."

Amendments. The 2009 amendment rewrote the section.

17-93-313. Notice of malpractice claim or suit.

(a) Every physical therapist and physical therapist assistant, within ten (10) days after receipt of notification of a claim or a filing of a lawsuit against him or her for malpractice, shall notify the Arkansas State Board of Physical Therapy of the claim or lawsuit.

(b) The board shall prepare and adopt regulations as are necessary and proper to assure compliance with this section.

History. Acts 1997, No. 744, § 2.

17-93-314. Applicability to other licensed persons.

(a) This chapter does not limit the authority of or prohibit a person licensed under any other act in this state from engaging in the practice for which he or she is licensed, including without limitation physicians licensed under § 17-81-101 et seq., § 17-91-101 et seq., § 17-95-101 et seq., or § 17-96-101 et seq.

(b) This chapter does not restrict a physician's ability to practice physical medicine and rehabilitation when licensed under § 17-91-101 et seq., § 17-95-101 et seq., § 17-96-101 et seq., or § 17-81-101 et seq.

History. Acts 2009, No. 1471, § 10.

A.C.R.C. Notes. Acts 2009, No. 1471, § 1, provided: "Legislative Intent. It is the intent of the General Assembly to protect the public health, safety, and welfare and provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the

intent of the General Assembly that only individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this chapter. This act shall be liberally construed to promote the public interest and to accomplish the purpose stated herein."

SUBCHAPTER 4 — ATHLETIC TRAINERS**SECTION.**

- 17-93-401. Short title.
- 17-93-402. Definitions.
- 17-93-403. Penalties.
- 17-93-404. Creation — Arkansas State Board of Athletic Training.
- 17-93-405. [Repealed.]
- 17-93-406. Powers and duties of the board.
- 17-93-407. License required — Exceptions.
- 17-93-408. Unlawful practice — Injunction.

SECTION.

- 17-93-409. Qualification — Athletic trainer.
- 17-93-410. Expiration and renewal.
- 17-93-411. Direction and supervision.
- 17-93-412. Revocation, suspension, or denial — Grounds.
- 17-93-413. Revocation, suspension, or denial — Proceedings.
- 17-93-414. Reciprocity.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-3 may not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 2001, No. 801, § 10: July 1, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that the Arkansas State Athletic Trainers Committee of the Arkansas State Board of Physical Therapy should be established as an independent agency; this act converts the committee into the Arkansas State Board of Athletic Training; the appropriation for the board goes into effect on July 1, 2001; and unless this emergency clause is adopted, this act will not go into effect until after July 1, 2001. Therefore, an

emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect on July 1, 2001."

Acts 2001, No. 1124, § 10: July 1, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that the Arkansas State Athletic Trainers Committee of the Arkansas State Board of Physical Therapy should be established as an independent agency; this act converts the committee into the Arkansas State Board of Athletic Training; the appropriation for the board goes into effect on July 1, 2001; and unless this emergency clause is adopted, this act will not go into effect

until after July 1, 2001. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect on July 1, 2001.”

17-93-401. Short title.

This subchapter shall be known and may be cited as the “Arkansas Athletic Trainers Act”.

History. Acts 1995, No. 1279, § 1.

17-93-402. Definitions.

As used in this subchapter:

(1) “Athlete” means an individual who is participating in organized athletic or team activities at the interscholastic, intramural, intercollegiate, or professional level, or sanctioned recreational sports activities;

(2) “Athletic injury or illness” means an injury or illness sustained by the athlete as a result of participation in those organized athletic or team activities which require physical strength, agility, flexibility, range of motion, speed, or stamina, or any comparable injury or illness to an athlete which prevents the person from participating in activities described in subdivision (1) of this section;

(3) “Athletic trainer” means a person licensed by the state to engage in athletic training;

(4) “Athletic training” means the prevention, recognition, evaluation, treatment, and rehabilitation of an athletic injury or illness and the organization and administration of exercise, conditioning, and athletic training programs;

(5) “Board” means the Arkansas State Board of Athletic Training;

(6) “Direct supervision” means supervision of the athletic trainer in a clinical setting in which the supervising physical therapist must be readily available for consultation for the care of the athlete but not necessarily on the premises;

(7) “License” means the document issued by the board to a qualified person to practice athletic training; and

(8) “Sanctioned recreational sports activities” means any athletic or team activity which requires physical strength, agility, flexibility, range of motion, speed, or stamina and meets one (1) or more of the following:

(A) Has officially designated coaches who have the responsibility for athletic activities of the organization;

(B) Has a regular schedule of practices or workouts which are supervised by the officially designated coaches;

(C) Is an activity generally recognized as having an established schedule of competitive events or exhibitions; and

(D) Has a policy requiring documentation of having passed a preparticipation medical examination conducted by a licensed physi-

cian as a condition for participation for the athletic activities of the organization.

History. Acts 1995, No. 1279, § 2;
2001, No. 1124, § 1.

17-93-403. Penalties.

(a) Any person who violates a provision of this subchapter is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment for not less than thirty (30) days nor more than one hundred eighty (180) days, or both.

(b) After notice and hearing, the Arkansas State Board of Athletic Training is also authorized to levy a civil penalty against any person licensed under the provisions of this subchapter after a finding that the person has violated any of the provisions of this subchapter or any regulations promulgated by the board.

(c) Civil penalties assessed by the board shall be no more than one thousand dollars (\$1,000) per incident.

(d) In addition to any other sanctions authorized by this subchapter, the board may impose a civil penalty as provided in this section against any unlicensed person practicing or offering to practice any actions requiring licensure pursuant to the provisions of this subchapter.

History. Acts 1995, No. 1279, § 3;
2001, No. 1124, § 9.

17-93-404. Creation — Arkansas State Board of Athletic Training.

(a)(1) There is created the Arkansas State Board of Athletic Training.

(2) The board shall be composed of four (4) licensed athletic trainers and one (1) consumer who is not actively engaged in or retired from the practice of athletic training, medicine, physical therapy, or employment by an athletic department of an accredited educational institution.

(3) In making appointments to the board, the Governor shall give consideration to recommendations made by professional organizations of athletic trainers.

(4) To qualify as a member of the board, a person must be a resident of the State of Arkansas for three (3) years immediately preceding appointment.

(b)(1) The members of the board shall be appointed for terms of three (3) years.

(2) In the event of the death, resignation, or removal of any member, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(3) The Governor may remove any member for cause before the expiration of the member's term.

(c)(1) The board shall elect officers as it considers necessary to carry out its duties.

(2)(A) The board shall meet at least two (2) times each year.

(B) Additional meetings may be held on the call of the chair or a written request of any three (3) members of the board.

(3) The quorum required for any meeting of the board is three (3) members.

(d) Each member of the board may receive expense reimbursements according to § 25-16-902 and stipends according to § 25-16-903.

History. Acts 1995, No. 1279, § 4; 2001, No. 1124, § 2; 2003, No. 1300, § 1.

A.C.R.C. Notes. As enacted by Acts 1995, No. 1279, § 4, subdivision (a)(3) also provided: “Each athletic trainer initially appointed must be practicing in Arkansas and must have passed a reliable, valid, and legally defensible examination approved by the board for determining minimum competency in athletic training.”

As enacted, subdivision (b)(1) ended: “except that in making the initial appointments, the Governor shall designate one (1) athletic trainer member to serve one (1) year, and one (1) athletic trainer member to serve two (2) years, and one athletic trainer member to serve three (3) years; other members shall be appointed to serve three (3) years.”

As enacted, this section contained a subsection (d), which provided: “(d) The Arkansas State Athletic Trainers Committee will exist under the Arkansas State

Board of Physical Therapy until July 1, 2001. On this date, if the committee has not been established by law as an independent agency of this state, it may at its option, continue to exist indefinitely under the Arkansas State Board of Physical Therapy.”

As amended in 2001, subdivision (a)(2) contained three additional sentences which read: “Those persons who serve as members of the Arkansas State Athletic Trainers Committee of the Arkansas State Board of Physical Therapy on June 30, 2001, shall serve as members of the Arkansas State Board of Athletic Training for the remainder of the terms for which they were appointed to the committee. The Governor shall appoint a fourth (4th) licensed athletic trainer as soon as possible. The initial fourth (4th) licensed athletic trainer appointee shall serve a two (2) year term, and his or her successors shall serve three (3) year terms.”

17-93-405. [Repealed.]

Publisher’s Notes. This section, concerning duties of the committee, was repealed by Acts 2001, No. 1124, § 3. The

section was derived from Acts 1995, No. 1279, § 5.

17-93-406. Powers and duties of the board.

The Arkansas State Board of Athletic Training shall have the following powers and duties:

- (1) To receive and maintain all records of board proceedings;
- (2) To adopt minimum curriculum and internship requirements for qualification for an Arkansas athletic trainer’s license;
- (3) To issue licenses;
- (4) To keep a complete record of all licensed athletic trainers, including:
 - (A) Preparing annually a roster showing the names and addresses of all licensed athletic trainers; and

(B) Making available a copy of such a roster to any person requesting it on payment of a fee as established by the board to cover the cost of the roster;

(5) To adopt rules and regulations consistent with this subchapter which are necessary for the performance of its duties, including, but not limited to, the imposing of fees adequate to carry out the purposes of this subchapter;

(6) To collect fees adequate to carry out the purposes of this subchapter;

(7) To keep records of fees collected and costs incurred for operations of the board and licensing of athletic trainers; and

(8) To file an annual report of its activities, including the activities of the board, with the Department of Finance and Administration.

History. Acts 1995, No. 1279, § 6;
2001, No. 1124, § 4.

17-93-407. License required — Exceptions.

(a) It shall be unlawful for any person to use the title of “athletic trainer”, “licensed athletic trainer”, “registered athletic trainer”, “L.A.T.”, or “R.A.T.”, or any symbols denoting the license of athletic training or perform any of the activities of an athletic trainer as defined by this subchapter without first obtaining all licenses required under this subchapter, unless provided otherwise in this subchapter.

(b) Nothing in this subchapter shall be construed to:

(1) Authorize the practice of medicine or physical therapy by any person not so licensed by the state;

(2) Prohibit the lawful practice of a licensed health care professional under the scope of his or her license;

(3) Prohibit the lawful practice of a licensed athletic trainer from another state who accompanies his or her team, athlete, or representatives to the State of Arkansas for limited competition; or

(4) Prohibit designated interns from university academic programs preparing athletic trainers from performing acts of athletic training incidental to their courses of study.

History. Acts 1995, No. 1279, §§ 7, 15.

17-93-408. Unlawful practice — Injunction.

(a) The circuit courts of this state are vested with jurisdiction and power to enjoin violations of this subchapter in the county in which the alleged unlawful practice occurred or in which the defendant resides.

(b) The issuance of an injunction shall not relieve a person from criminal prosecution for violation of this subchapter, but the remedy of injunction shall be in addition to liability for criminal prosecution.

History. Acts 1995, No. 1279, § 10.

17-93-409. Qualification — Athletic trainer.

(a) For the purpose of this subchapter, a person is actively engaged as an athletic trainer if the person has performed such duties as a principal part of his or her full-time employment under the direction of a licensed physician for three (3) of the past five (5) years preceding the application.

(b) An applicant for an Arkansas athletic trainer's license must:

(1) Possess a bachelor's degree from an accredited college or university;

(2) Meet other curriculum and internship requirements as specified by the Arkansas State Board of Athletic Training;

(3) Pass an examination for licensure as designated by the board which is a reliable, valid, legally defensible examination for determining minimum competency in athletic training;

(4) Submit appropriate application forms to the board; and

(5) Pay all appropriate fees.

(c) Notarized proof of employment, performance of duties, and supervision shall accompany the person's application.

(d) Anyone who meets the qualifications prescribed in subsection (b) of this section except for the examination requirement under subdivision (b)(3) of this section shall be issued a temporary nonrenewable trainer's permit which shall expire one (1) year after the date of application therefor.

History. Acts 1995, No. 1279, § 11; 2001, No. 1124, § 5.

A.C.R.C. Notes. As enacted, subsection (a) of this section began: "The board on recommendation of the committee shall register as an athletic trainer any applicant who is actively engaged as an athletic trainer on the effective date of this act if the applicant submits an application, submits proof of certification by the National Athletic Trainers Association, submits proof of having passed a reliable, valid and legally defensible examination approved by the board for determining mini-

um competency in athletic training, and pays all required fees. Any person who meets the requirements of this paragraph other than having passed the test shall be registered hereunder if he or she successfully passes the test within one (1) year after the effective date of this act."

As enacted, subsection (a) of this section also provided: "Application for license under Section 10(a) [§ 17-93-408(a)] must be made within ninety (90) days after the effective date of this act."

As enacted, subsection (b) of this section began: "Except as provided in (a)."

17-93-410. Expiration and renewal.

(a) A license issued under this subchapter expires one (1) year after the date of issuance.

(b) Licenses shall be renewed according to procedures established by the Arkansas State Board of Athletic Training.

History. Acts 1995, No. 1279, § 9; 2001, No. 1124, § 6.

17-93-411. Direction and supervision.

(a) In a nonclinical setting, an athletic trainer may practice the art and science of athletic training under the direction of a physician licensed in the State of Arkansas.

(b) The athletic trainer may practice athletic training in a hospital or outpatient clinic under the direct supervision of a physical therapist and upon the referral of a physician licensed in the State of Arkansas.

History. Acts 1995, No. 1279, § 8;
2001, No. 1124, § 7.

17-93-412. Revocation, suspension, or denial — Grounds.

(a) The Arkansas State Board of Athletic Training may refuse to issue or renew a license or suspend or revoke a license if an applicant has:

(1) Been convicted of a felony or misdemeanor involving moral turpitude, the record of conviction being conclusive evidence of conviction if the board determines after investigation that the person has not been sufficiently rehabilitated to warrant the public trust;

(2) Secured a license under this subchapter by fraud or deceit; or

(3) Violated or conspired to violate this subchapter or rules or regulations issued pursuant to this subchapter.

(b)(1) On application, the board may reissue a license to a person whose license has been revoked, but the application may not be made prior to the expiration of a period of one (1) year after the order of revocation has become final.

(2) Such application shall be made in the manner and form required by the board.

History. Acts 1995, No. 1279, § 12;
2001, No. 1124, § 8.

17-93-413. Revocation, suspension, or denial — Proceedings.

(a) Any person whose application for a license or for renewal of a license is denied is entitled to a hearing, which shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b)(1) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the Arkansas State Board of Athletic Training in writing.

(2) The charge may be brought by any person.

(c) The board shall fix the time and place of the hearing and shall provide a written copy of the charges or reason for the denial of the license or for the refusal to renew the license, together with a notice of the time and place fixed for the hearing, to be served on the applicant requesting the hearing or license against whom the charges have been filed at least thirty (30) days prior to the date set for the hearing.

History. Acts 1995, No. 1279, § 13.

17-93-414. Reciprocity.

(a) A licensed athletic trainer who has been issued a license to practice as an athletic trainer in another state or territory whose requirements for registration and licensure were equal, at the time of registration or licensure, to the requirements contained in this subchapter may be registered and issued a license by the Arkansas State Board of Athletic Training, provided the other state or territory accords a similar privilege of registration and licensure to persons registered and licensed in the State of Arkansas by the board.

(b) The issuance of a license by reciprocity shall be at the sole discretion of the board.

History. Acts 1995, No. 1279, § 14.

CHAPTER 94
PHYSICIAN'S TRAINED ASSISTANTS

SECTION.
17-94-101 — 17-94-113. [Repealed.]

17-94-101 — 17-94-113. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 1999, No. 851, § 25. The chapter was derived from the following sources:

- 17-94-101. Acts 1977, No. 459, § 17; A.S.A. 1947, § 72-2017.
- 17-94-102. Acts 1977, No. 459, § 1; A.S.A. 1947, § 72-2001.
- 17-94-103. Acts 1977, No. 459, §§ 3, 4; A.S.A. 1947, §§ 72-2003, 72-2004.
- 17-94-104. Acts 1977, No. 459, § 2; A.S.A. 1947, § 72-2002.
- 17-94-105. Acts 1977, No. 459, § 2; A.S.A. 1947, § 72-2002.
- 17-94-106. Acts 1977, No. 459, §§ 6, 8; A.S.A. 1947, §§ 72-2006, 72-2008.
- 17-94-107. Acts 1977, No. 459, § 5; A.S.A. 1947, § 72-2005.

- 17-94-108. Acts 1977, No. 459, § 7; A.S.A. 1947, § 72-2007.
- 17-94-109. Acts 1977, No. 459, § 10; A.S.A. 1947, § 72-2010; Acts 1993, No. 277, § 1.
- 17-94-110. Acts 1977, No. 459, § 15; A.S.A. 1947, § 72-2015.
- 17-94-111. Acts 1977, No. 459, §§ 13, 14; A.S.A. 1947, §§ 72-2013, 72-2014.
- 17-94-112. Acts 1977, No. 459, §§ 9, 12; A.S.A. 1947, §§ 72-2009, 72-2012.
- 17-94-113. Acts 1977, No. 459, § 11; A.S.A. 1947, § 72-2011.
- For present law, see § 17-105-101 et seq.

CHAPTER 95
PHYSICIANS AND SURGEONS

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 2. ARKANSAS MEDICAL PRACTICES ACT — GENERAL PROVISIONS.
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6. PUBLIC ACCESS TO AUTOMATED EXTERNAL DEFIBRILLATION ACT OF 1999. [REPEALED.]
7. TREATMENT OF CHRONIC INTRACTABLE PAIN.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-93-101 et seq.

Cross References. Investigations and inspections of alleged wrongdoing, § 17-80-106.

RESEARCH REFERENCES

ALR. License or professional degree of spouse as marital property for purposes of alimony, support or property settlement. 4 A.L.R.4th 1294.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice. 22 A.L.R.4th 668.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Improper or immoral sexually related conduct toward patient as grounds for disciplinary action against physician, dentist or other licensed healer. 59 A.L.R.4th 1104.

Medical practitioner's liability for treatment given child without parent's consent. 67 A.L.R.4th 511.

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Liability for interference with physician-patient relationship. 87 A.L.R.4th 845.

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Validity of state statute prohibiting health providers from the practice of waiving patients' obligation to pay health insurance deductibles or copayments or advertising such practice. 8 A.L.R.5th 855.

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Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.

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Liability for negligence of ambulance attendants, emergency medical technicians, and the like, rendering emergency medical care outside hospital. 16 A.L.R.5th 605.

Exclusion of or discrimination against physician or surgeon by hospital. 28 A.L.R.5th 107.

False or fraudulent statements or non-disclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner. 32 A.L.R.5th 57.

Medical malpractice liability of sports medicine care providers for injury to, or death of, athlete. 33 A.L.R.5th 619.

Allowance of punitive damages in medical malpractice actions. 35 A.L.R.5th 145.

Physician's admission of negligence as establishing standard of care and breach of that standard. 42 A.L.R.5th 1.

Propriety of and liability relating to issuance or enforcement of do not resuscitate (DNR) orders. 46 A.L.R.5th 793.

Physician's liability for injury or death resulting from side effects of drugs intentionally administered to or prescribed for patient. 47 A.L.R.5th 433.

Liability of Health Maintenance Organizations (HMOs) for negligence of member physician. 51 A.L.R.5th 271.

Hospital liability as to diagnosis and care of patients in emergency room. 58 A.L.R.5th 613.

Coverage of professional liability or indemnity policy for sexual contact with patients by physicians, surgeons, and other healers. 60 A.L.R.5th 239.

Liability for donee's contraction of AIDS from blood transfusion. 64 A.L.R.5th 333.

Liability of hospital or medical practitioner under doctrine of strict liability in tort, or breach of warranty, for harm caused by drug, medical instrument, or similar device used in treating patients.

65 A.L.R.5th 357.

Physical injury requirement for emotional distress claim based on false positive conclusion on medical test diagnosing disease. 69 A.L.R.5th 411.

Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action. 69 A.L.R.5th 559.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., §§ 1, 2 and § 26 et seq.

Ark. L. Rev. Leflar, Liberty and Death: Advance Health Care Directives and the Law of Arkansas, 39 Ark. L. Rev. 375.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

U. Ark. Little Rock L.J. Lisk, A Physician's Respondeat Superior Liability for the Negligent Acts of Other Medical Professionals — When the Captain Goes Down Without the Ship, 13 U. Ark. Little Rock L.J. 183.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-95-101. "Good Samaritan" law.
- 17-95-102. Legend drugs.
- 17-95-103. Notice of malpractice claims.
- 17-95-104. Hospital's duty to report physician misconduct.
- 17-95-105. [Repealed.]

SECTION.

- 17-95-106. Volunteer services by retired physicians and surgeons — Immunity from liability.
- 17-95-107. Credentialing organization.
- 17-95-108. Informed consent required for gastric bypass surgery.

Effective Dates. Acts 1963, No. 46, § 3: Feb. 8, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law of this state relative to the liability of persons for acts or omissions while rendering emergency care or assistance to another is inequitable and tends to discourage emergency assistance to persons in need thereof, and that this act is immediately necessary to correct this inequity. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1975, No. 306, § 4: Mar. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly of Arkansas that the problem of physicians securing medical malpractice

insurance has reached crisis proportions, that the reporting of medical malpractice claims and suits will permit the medical profession to better determine the cause and amounts of malpractice losses by insurance companies writing malpractice insurance, that the high cost of medical malpractice insurance constitutes an immediate danger to the health, safety and welfare of the people of the State of Arkansas, and that this act is immediately necessary to aid in the solution of the malpractice insurance crisis. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 451, § 6: Mar. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General As-

sembly of the State of Arkansas that the public health, safety and welfare require that incompetent or disabled physicians shall not be permitted to practice medicine in the State of Arkansas and that the provisions of this act will aid and assist the Arkansas State Medical Board in protecting the people of Arkansas from incompetency in the delivery of medical care. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in force from the date of its approval."

Acts 1987, No. 190, § 3: Mar. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that subsection (e) of Section 3 of Act 515 of 1983 contained an erroneous reference to Section 2(d) which reference should be to section 3(d); that this erroneous reference has caused some confusion and disagreement concerning the registration of dispensing physicians who had been engaged in dispensing drugs in the ordinary course of their practice for at least twelve months prior to the effective date of Act 515 of 1983; that this Act is designed to correct this reference and to clarify this confusion and disagreement and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1066, § 10: Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current credentialing information gathering system creates unnecessary duplications that add significant costs to the state's health care industry; that this act provides a collaborative approach to eliminate unnecessary duplication and save expenses, and that this act should go into effect immediately in order to more efficiently provide health care to the citizens of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 373: Mar. 6, 1997. Emergency clause provided: "It is found and

determined by the General Assembly of the State of Arkansas that hospitals, credentialing organizations and insurance companies are in need of physician credentialing information collected by the Arkansas State Medical Board; that said information should be privileged and the sharing of said information should be protected so as to enhance the credentialing process of the medical providers; that said confidentiality of credentialing information does not now exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1410, § 6: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that hospitals, credentialing organizations and insurance companies are in need of physician credentialing information collected by the Arkansas State Medical Board; that said information should be privileged and the sharing of said information should be protected so as to enhance the credentialing process of medical providers; that the laws protecting the credentialing process which now exist will expire on July 1, 1999 and that passage of this act will provide for the continued protection of the credentialing process. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 2003, No. 1360, § 4: Apr. 15, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the regulations required by this act must be in effect before July 1, 2003; that the Arkansas State Medical Board must have sufficient time to prepare the regulations required under this act; that the continuing practice of the state's physicians may be adversely affected if this act does not go into

effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If

the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

17-95-101. "Good Samaritan" law.

(a) Any health care professional under the laws of the State of Arkansas who in good faith lends emergency care or assistance without compensation at the place of an emergency or accident shall not be liable for any civil damages for acts or omissions performed in good faith so long as any act or omission resulting from the rendering of emergency assistance or services was not grossly negligent or willful misconduct.

(b) Any person who is not a health care professional who is present at an emergency or accident scene and who:

(1) Believes that the life, health, and safety of an injured person or a person who is under imminent threat of danger could be aided by reasonable and accessible emergency procedures under the circumstances existing at the scene thereof; and

(2) Proceeds to lend emergency assistance or service in a manner calculated in good faith to lessen or remove the immediate threat to the life, health, or safety of such a person, shall not be held liable in civil damages in any action in this state for any act or omission resulting from the rendering of emergency assistance or services unless the act or omission was not in good faith and was the result of gross negligence or willful misconduct.

(c) No health care professional who in good faith and without compensation renders voluntary emergency assistance to a participant in a school athletic event or contest at the site thereof or during transportation to a health care facility for an injury suffered in the course of the event or contest shall be liable for any civil damages as a result of any acts or omissions by that health care professional in rendering the emergency care. The immunity granted by this subsection shall not apply in the event of an act or omission constituting gross negligence.

(d) For the purposes of this section, "health care professional" means a licensed physician, chiropractic physician, dentist, optometric physician, podiatric physician, and any other licensed health care professional.

History. Acts 1963, No. 46, § 1; 1979, No. 55, § 1; 1979, No. 725, § 1; A.S.A. 1947, §§ 72-624, 72-624.1; Acts 1993, No. 1190, § 1; 2007, No. 683, § 1; 2007, No. 1038, § 1.

207, this section is set out above as amended by Acts 2007, No. 1038, § 1. This section was also amended by Acts 2007, No. 683, § 1 to read as follows:

"(a) Any person licensed as a physician or surgeon under the laws of the State of

A.C.R.C. Notes. Pursuant to § 1-2-

Arkansas who, in good faith, lends emergency care or assistance without compensation at the place of an emergency or accident, shall not be liable for any civil damages for acts or omissions performed in good faith so long as any act or omission resulting from the rendering of emergency assistance or services was not grossly negligent or willful misconduct.

“(b) Any person who is not a physician, surgeon, nurse, or other person trained or skilled in the treatment of medical emergencies who is present at an emergency or accident scene and who:

“(1) Believes that the life, health, and safety of an injured person or a person who is under imminent threat of danger could be aided by reasonable and accessible emergency procedures under the circumstances existing at the scene thereof; and

“(2) Proceeds to lend emergency assistance or service in a manner calculated in good faith to lessen or remove the immediate threat to the life, health, or safety of such a person, shall not be held liable in civil damages in any action in this state for any act or omission resulting from the rendering of emergency assistance or services unless the act or omission was not in good faith and was the result of gross negligence or willful misconduct.

“(c) No physician or surgeon who in good faith and without compensation renders

voluntary emergency medical assistance to a participant in a school athletic event or contest at the site thereof or during transportation to a health care facility for an injury suffered in the course of the event or contest shall be liable for any civil damages as a result of any acts or omissions by that physician or surgeon in rendering the emergency medical care. The immunity granted by this subsection shall not apply in the event of an act or omission constituting gross negligence.

“(d) For the purposes of this section and any other law of this state that takes effect on or after January 1, 1994, the term ‘physician’ shall mean a person licensed by the Arkansas State Medical Board, the Arkansas State Board of Chiropractic Examiners, or the Arkansas State Podiatry Examining Board.”

Publisher’s Notes. Acts 1993, No. 1190, § 1, codified here as subsection (d), is also codified as § 17-80-107.

Amendments. The 2007 amendment rewrote the section.

Cross References. Chiropractors, § 17-81-101 et seq.

Emergency medical treatment, implied consent, § 20-9-603.

Immunity from civil liability for requested emergency services, § 16-120-401.

Podiatrists, § 17-96-101 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Liability of the Hospital Cardiac Arrest Team, 26 Ark. L. Rev. 17.

U. Ark. Little Rock L.J. Powell, Survey of Torts, 3 U. Ark. Little Rock L.J. 316.

17-95-102. Legend drugs.

(a) A dispensing physician is a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., who purchases legend drugs to be dispensed to his or her patients for the patients’ personal use and administration outside the physician’s office.

(b) This section shall not apply to physicians who only dispense drugs in injectable form unless they are controlled substances, in which case the section shall fully apply.

(c) The dispensing physician shall:

(1) Personally dispense legend drugs, and the dispensing of such drugs may not be delegated;

(2) Keep records of all receipts and distributions of legend drugs. The records shall be subject to inspection by the proper enforcement

authority and shall be readily accessible for inspection and maintained in a central registry; and

(3) Label legend drugs with the following information:

(A) Patient's name and address;

(B) Prescribing physician's address and narcotic registry number issued by the Drug Enforcement Administration of the United States Department of Justice;

(C) Date of dispensing; and

(D) Directions and cautionary statements, if any, as required by law.

(d) No physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., shall dispense legend drugs without prior approval by the Arkansas State Medical Board after application to the board and on the showing of need. Licensed physicians who were dispensing in the ordinary course of their practice for the twelve (12) months immediately prior to July 4, 1983, shall be exempt from the requirements of this subsection.

(e) The board shall enforce the provisions of this section and is authorized and directed to adopt regulations to carry out its purpose.

History. Acts 1983, No. 515, §§ 1-4; A.S.A. 1947, §§ 72-638 — 72-641; Acts 1987, No. 190, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

17-95-103. Notice of malpractice claims.

(a) Every physician licensed to practice medicine and surgery in the State of Arkansas, within ten (10) days after the receipt or notification of a claim or filing of a lawsuit against him or her charging him or her with medical malpractice, shall notify the Arkansas State Medical Board of the claim or lawsuit. The notice shall be sent by registered letter to the office of the board and upon such forms as may be approved by the board. If the malpractice claim is in the form of a complaint in a filed law suit, a copy of the complaint shall be furnished to the board along with the notification required by this section.

(b) The reports required to be filed by physicians under this section shall be privileged and shall not be open for public inspection except upon order of a court of competent jurisdiction.

(c) The board is authorized and directed to prepare and adopt such regulations as are necessary and proper to assure compliance with the provisions of this section.

History. Acts 1975, No. 306, §§ 1-3; A.S.A. 1947, §§ 72-625 — 72-627.

17-95-104. Hospital's duty to report physician misconduct.

(a)(1) A hospital licensed by or under the jurisdiction of the State of Arkansas, within sixty (60) days after taking such action as described in this section, shall report in writing to the Arkansas State Medical Board the name of any member of the medical staff or any other physician practicing in the hospital whose hospital privileges have been revoked, limited, or terminated for any cause, including resignation, together with pertinent information relating to the action.

(2) The hospital shall also report any other formal disciplinary action concerning any such physician taken by the hospital upon recommendation of the medical staff relating to professional ethics, medical incompetence, moral turpitude, or drug or alcohol abuse.

(b) The filing of a report with the board pursuant to this section, investigation by the board, or any disposition by the board shall not, in and of itself, preclude any action by a hospital or other health care facility or professional society comprised primarily of physicians to suspend, restrict, or revoke the privileges or membership of such a physician.

(c) No hospital or employee of a hospital reporting to the board as provided by this section shall be liable in damages to any person for slander, libel, defamation of character, or otherwise because of the report.

(d) Any reports, information, or records received and maintained by the board pursuant to this section, including any such material received or developed by the board during an investigation or hearing, shall be strictly confidential. The board may only disclose any such confidential information:

(1) In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order;

(2) To physician licensing or disciplinary authorities of other jurisdictions or to hospital committees located within or outside this state which are concerned with granting, limiting, or denying a physician's hospital privileges. The board shall include along with any such disclosure an indication as to whether or not the information has been substantiated; or

(3) Pursuant to an order of a court of competent jurisdiction.

History. Acts 1977, No. 451, §§ 1-4; A.S.A. 1947, §§ 72-634 — 72-637.

Cross References. Hospitals, § 20-9-301 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

CASE NOTES

Confidentiality.

All records, documents and other information provided to the state medical board, regarding revocation of the medical staff privileges of defendant, are abso-

lutely privileged by Arkansas statutory provisions and cannot be discovered or admitted into evidence in a medical malpractice suit. *Hendrickson v. Leipzig*, 715 F. Supp. 1443 (E.D. Ark. 1989).

17-95-105. [Repealed.]

A.C.R.C. Notes. Acts 1995, No. 1066, § 6, provided: "This act expires and shall become null and void on July 1, 1999."

Publisher's Notes. This section, concerning providing information to a creden-

tialing organization, was repealed by Acts 1999, No. 1410, § 1. The section was derived from Acts 1995, No. 1066, §§ 1-5; 1997, No. 373, § 1.

17-95-106. Volunteer services by retired physicians and surgeons — Immunity from liability.

(a) Retired physicians and surgeons who are still licensed to practice medicine by the Arkansas State Medical Board under the laws of the State of Arkansas, and who render medical services voluntarily and without compensation to any person at any free or low-cost medical clinic located in the State of Arkansas and registered by the State Board of Health, which accepts no insurance payments and provides medical services free of charge to persons unable to pay or provides medical services for a nominal fee, shall not be liable for any civil damages for any act or omission resulting from the rendering of such medical services, unless the act or omission was the result of the licensee's gross negligence or willful misconduct.

(b) The State Board of Health is empowered to adopt such rules and regulations as it may determine necessary to provide for the registration of free or low-cost medical clinics under this section. Provided, the rules and regulations shall require that each person, patient, or client to whom medical services are provided has been fully informed before any treatment by the physician providing the services or by the staff of the medical clinic of the immunity from civil suit provisions of this section, and has acknowledged that fact in writing on a form approved or designated by the Department of Health.

(c) The State Board of Health and its members, and the department and its agents and employees, are exempt and immune from liability for any claims or damages when performing their duties pursuant to this section.

(d) The provisions of this section shall not affect the Arkansas Volunteer Immunity Act, § 16-6-101 et seq.

History. Acts 1995, No. 844, §§ 1-4. tort liability, § 16-120-101 et seq.
Cross References. Immunity from Osteopaths, § 17-91-101 et seq.

17-95-107. Credentialing organization.

(a) The purpose of this section is to allow the Arkansas State Medical Board to provide information to credentialing organizations.

(b) As used in this section:

(1) "Accrediting organization" means an organization that awards accreditation or certification to hospitals, managed care organizations, or other health care organizations, including, but not limited to, the Joint Commission on the Accreditation of Healthcare Organizations and the National Committee for Quality Assurance;

(2) "Board" means the Arkansas State Medical Board;

(3) "Credentialing information" means:

(A) Information regarding a physician's:

(i) Professional training, qualifications, background, practice history, and experience, for example, status of medical license;

(ii) Clinical hospital privileges;

(iii) Status of Drug Enforcement Administration certificate;

(iv) Education, training, and board certification;

(v) Work history;

(vi) Current malpractice coverage;

(vii) History of professional liability or malpractice claims;

(viii) Drug or alcohol abuse to the extent permitted by law;

(ix) History of board appearances;

(x) Loss, surrender, restriction, or suspension of license;

(xi) Felony convictions;

(xii) History of loss or limitation of privileges or disciplinary activity;

(xiii) Attestation of the correctness and completeness of the application; and

(xiv) History of Medicare or Medicaid or other sanctions; and

(B) Other objective information typically required by accrediting organizations for the purpose of credentialing physicians;

(4) "Credentialing organization" means a hospital, clinic, or other health care organization, managed care organization, insurer, or health maintenance organization; and

(5) "Primary source verification procedure" means the procedure used by a credentialing organization to test the accuracy of documents and credentialing information submitted to it by or about a physician who is applying for affiliation or participation with the credentialing organization. This procedure involves the verification of credentials with the originating source of the credentials.

(c)(1) All physicians licensed by the board shall submit such credentialing information as the board may request so that the board may verify the information by the primary source verification procedure in order to make the information available to credentialing organizations. If the physician should fail to submit the information as the board requests within a period of thirty (30) days, the failure can result in the suspension of the physician's license to practice medicine in the State of

Arkansas after the matter is presented to the full board for a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) Any credentialing organization shall submit such credentialing information as it has in its possession to the board in order to complete the primary source verification procedure, upon the board's request and upon the board's providing proof that the physician has authorized the release of the information. The failure of the organization to release the information to the board shall be grounds to have the license to do business in the State of Arkansas suspended upon the board's presenting the proof to the licensing agency of that organization.

(3) Credentialing organizations may utilize credentialing information provided by the board and verified by the primary source verification procedure of the board to evaluate the following:

(A) Granting or denying the application of a physician for affiliation or participation within the organization or its networks;

(B) The quality of services provided by a physician or the physician's competency or qualifications;

(C) Renewal of the affiliation or participation of the physician; and

(D) The type, extent, or conditions of the physician's privileges or participation in the network.

(d)(1)(A) The board shall provide to any credentialing organization any credentialing information the board collects concerning any person licensed by the board if the person authorizes release of the information.

(B) The board shall provide the information within fifteen (15) business days after receipt of the request.

(C) If any person fails or refuses for any reason to authorize release of credentialing information, the requesting credentialing organization shall be entitled on grounds of the refusal to exclude the person from any privileges, contract, or network of the credentialing organization.

(2)(A) The board shall promulgate regulations establishing a credentialing information system, and the regulations shall indicate the procedures for collection and release of credentialing information under this section.

(B) The regulations shall require that before July 1, 2003, the process of recredentialing a physician shall be completed within thirty (30) business days unless circumstances beyond the control of the board make completion of the process within thirty (30) business days impossible or unduly burdensome.

(C) If the credentialing process is not completed within the required time and the board does not provide an adequate explanation for failing to meet the time requirement, the fee for the credentialing process shall be refunded to the credentialing organization, hospital, or other qualified recipient of the fee.

(D) If disagreements arise over a claim that circumstances have made timely completion impossible or unduly burdensome, the dis-

agreement shall be presented to the advisory committee established under subdivision (d)(3) of this section for a recommendation to the board on whether or not to refund the fee and in what amount so that the board may issue an order to refund the fee or deny the request after consideration by the board.

(3) The board shall appoint a ten-member advisory committee to assist with the adoption of policies and regulations concerning the credentialing information system. At least six (6) of the ten (10) members of the advisory committee shall be representative of credentialing organizations subject to this section, including not fewer than two (2) hospital representatives and not fewer than two (2) insurer or health maintenance organization representatives.

(4) Credentialing information shall not be disclosed to any parties other than the applicable health care provider and the credentialing organization and its designated credentialing and appeals, peer review, and quality improvement committees or bodies. Except as permitted in this section, credentialing information shall not be used for any purpose other than review by the board and credentialing organizations of the professional background, competency, qualifications, and credentials or renewal of credentials of a health care provider or appeals therefrom, and all such credentialing information shall be exempt from disclosure under the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq. Credentialing information may be disclosed in the following circumstances:

(A) By the board in disciplinary hearings before the board or in any trial or appeal of the board action or order;

(B) By the board or credentialing organization to any licensing, regulatory, or disciplinary authorities or agencies of the United States or of other states or jurisdictions; and

(C) In any legal or regulatory proceeding that:

(i) Is brought by a:

(a) Health care provider;

(b) Representative of the health care provider or a class thereof;

(c) Local, state, or federal agency or authority; or

(d) Patient or group or class of patients or their authorized representatives or agents; and

(ii) Challenges the actions, omissions, or conduct of the credentialing organization with respect to credentialing of any health care provider or the grant or denial of any affiliation or participation of the health care provider with or in the credentialing organization or any network thereof; or

(D) By any party when authorized to do so by the health care provider to whom the credentialing information relates.

(5) The evaluation and discussion of credentialing information by a credentialing organization shall not be subject to discovery or admissible pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq.

(6) The board may enter into contractual agreements with users of the credentialing information system to define the type and form of

information to be provided and to give users assurances of the integrity of the information collected.

(7)(A) The board may charge credentialing organizations a reasonable fee for the use of the credentialing service as established by rule and regulation.

(B) The fee shall be set in consultation with the advisory committee and shall be set at such a rate as will reimburse the board, when added to the credentialing assessments collected from physicians, for the cost of maintaining the credentialing information system.

(C) The board's costs may not exceed the fees charged by private vendors with a comparable statewide credentialing service.

(D) The board may assess each physician licensee an amount not to exceed one hundred dollars (\$100) per year to offset the cost of providing the credentialing service.

(e)(1)(A) In lieu of testing credentialing information by its own primary source verification procedure, a credentialing organization may rely upon credentialing information from the board if the board certifies that the information provided by the board has been tested by the board's primary source verification procedure.

(B) The credentialing organization shall be immune from civil suit based on any allegation of wrongdoing or negligence involved in the collection and verification of or reliance upon credentialing information on a health care provider if the credentialing organization has utilized the information provided by the board in credentialing a health care provider for affiliation or participation with the credentialing organization. However, this does not convey immunity from civil suit to a credentialing organization for any credentialing decision it makes.

(2) Subject only to the exceptions recognized in subdivisions (f)(1) and (2) of this section, a credentialing organization shall be precluded hereby from seeking credentialing information from the physician or from sources other than the board if:

(A) The same credentialing information is available from the board; and

(B) At the time the credentialing information is requested, the board:

(i) Holds certification by the National Committee for Quality Assurance as a certified credentials verification organization;

(ii) Demonstrates compliance with the principles for credentials verification organizations set forth by the Joint Commission on the Accreditation of Healthcare Organizations;

(iii) Documents compliance with Department of Health rules and regulations applicable to credentialing; and

(iv) Maintains evidence of compliance with the standards referenced in subdivisions (e)(2)(B)(i)-(iii) of this section; and

(C) The board charges fees that comply with subdivision (d)(7) of this section. Until such time as the board satisfies each of the foregoing prerequisites, credentialing organizations, in their discre-

tion, may utilize credentialing information obtained from the board, or they may seek other sources for the same credentialing information. If at any time the board fails to satisfy any of the certification or compliance standards referenced in this subsection, no credentialing organization shall be required to utilize the board to obtain credentialing information during any period in which the board lacks such accreditation or compliance.

(f)(1) Credentialing organizations that utilize the credentialing information system offered by the board shall not attempt to collect duplicate information from individual physicians or originating sources, but nothing in this section shall prevent any credentialing organization from collecting or inquiring about any data not available from or through the board, nor from reporting to or inquiring of the National Practitioner Data Bank.

(2) The board may seek an injunction against any credentialing organization violating or attempting to violate this section and, upon prevailing, shall be entitled to recover attorney's fees and court costs involved in obtaining the injunction.

(g) The board will have the authority to hire such employees and enter into contracts with attorneys, individuals, or corporations for services as may be necessary to bring about the purpose of this section.

(h) The board shall report quarterly to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor concerning the credentialing process established in this section.

History. Acts 1999, No. 1410, § 2; 2003, No. 1360, §§ 1-3; 2005, No. 1962, § 76.

17-95-108. Informed consent required for gastric bypass surgery.

(a) No gastric bypass surgery may be performed in this state unless the physician who will perform the surgery has informed the patient in writing, as evidenced by the patient's signature, of the known risks and complications of the procedure, including, but not limited to:

(1) The surgery itself;

(2) All known and documented future complications that may occur as a result of the procedure;

(3) Side effects that may result from vitamin deficiency and malnutrition; and

(4) The requirements for appropriate follow up.

(b)(1) The Arkansas State Medical Board shall promulgate rules and regulations to enforce this section within six (6) months of July 16, 2003.

(2) The rules and regulations shall utilize scientifically accepted information from national medical specialty boards, organizations, or governmental agencies in determining the specific content and lists of

complications or side effects, or both, that must be included in the informed consent.

History. Acts 2003, No. 1356, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Businesses, Gastric Bypass Surgery, 26 U. Ark. Little Rock L. Rev. 455.

SUBCHAPTER 2 — ARKANSAS MEDICAL PRACTICES ACT — GENERAL PROVISIONS

SECTION.

- 17-95-201. Short title.
- 17-95-202. Definitions.
- 17-95-203. Exemptions.
- 17-95-204. Perjury.
- 17-95-205. [Repealed.]

SECTION.

- 17-95-206. Out-of-state physicians.
- 17-95-207. Temporary license for out-of-state physicians.
- 17-95-208. Rules on physician's authority to delegate.

Cross References. Applicability to osteopathic practitioners, § 17-91-103.

Performance of artificial insemination, § 9-10-201 et seq.

Effective Dates. Acts 1957, No. 198, § 25: Mar. 11, 1957. Emergency clause provided: "It is determined that the practice of medicine is a profession that vitally affects the peace, health, safety and welfare of every citizen in this state. In order to properly accomplish regulation and supervision thereof, and thus protect our citizens against charlatans and quacks, appropriate restrictive and definitive legislation governing the practice of medicine is not only desirable but necessary. The General Assembly, having determined that, present laws to accomplish this purpose being inadequate, this law is necessary to protect the peace, health, safety and welfare of the citizens of our state; therefore, an emergency is declared to exist and this law shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 53, § 2: approved Feb. 5, 1971. Emergency clause provided: "It having been found and declared by the General Assembly of the State of Arkansas that there is a shortage of physicians in certain areas of the State of Arkansas, that the passage of this act will make available to the people of the State of

Arkansas increased medical services, and that such increased medical services are immediately and urgently needed by the people of the State of Arkansas; and this act being necessary for the immediate preservation of the public peace, health and safety of the people of the State of Arkansas, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1977, No. 459, § 19: Mar. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is a shortage of physicians as well as other medical personnel in certain sectors of the State of Arkansas which has created a serious problem affecting the public health, safety and welfare and the growing demand for health services has placed a heavy burden to discover all possible means of achieving greater efficiency in the utilization of health manpower resources, and it is further found that the employment of physician's trained assistants is an effective method of achieving medical manpower efficiency; and the General Assembly has found that this act is necessary for the immediate preservation of the public peace, health and safety. Therefore, an emergency is declared and this act shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Note, Consent: What's Up, Doc?, 19 U. Ark. Changes in the Arkansas Law of Informed Little Rock L.J. 263.

CASE NOTES

Cited: Arkansas State Medical Bd. v. (1974); Smith v. Bentley, 493 F. Supp. 916 Cross, 256 Ark. 388, 507 S.W.2d 709 (E.D. Ark. 1980).

17-95-201. Short title.

Sections 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., shall be known as the "Arkansas Medical Practices Act".

History. Acts 1957, No. 198, § 1; A.S.A. 1947, § 72-601.

17-95-202. Definitions.

As used in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.:

(1) "Active" means actively engaged in the full-time practice of medicine;

(2) "Board" means the Arkansas State Medical Board; and

(3) "Practice of medicine" means:

(A) Holding out one's self to the public within this state as being able to diagnose, treat, prescribe for, palliate, or prevent any human disease, ailment, injury, deformity, or physical or mental condition, whether by the use of drugs, surgery, manipulation, electricity, or any physical, mechanical, or other means whatsoever;

(B) Suggesting, recommending, prescribing, or administering any form of treatment, operation, or healing for the intended palliation, relief, or cure of any physical or mental disease, ailment, injury, condition, or defect of any person with the intention of receiving, either directly or indirectly, any fee, gift, or compensation whatsoever;

(C) Maintaining an office or other place to meet persons for the purpose of examining or treating persons afflicted with disease, injury, or defect of body or mind;

(D) Using the title "M.D.", "M.B.", "D.O.", "physician", "surgeon", or any other word or abbreviation to indicate or induce others to believe that one is engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind, except as otherwise expressly permitted by the laws of this state relating to the practice of any limited field of the healing arts;

(E) Performing any kind of surgical operation upon a human being; or

(F) Delegating certain medical practices to other personnel under rules adopted by the board.

History. Acts 1957, No. 198, §§ 2, 4; 1971, No. 53, § 1; A.S.A. 1947, §§ 72-603, 72-604; Acts 2001, No. 464, § 1; 2005, No. 2010, § 1; 2007, No. 827, § 137; 2009, No. 472, § 1.

Amendments. The 2007 amendment deleted "a physician" following "means" in (1).

The 2009 amendment added (3)(F) and made related changes.

CASE NOTES

ANALYSIS

Chiropractors.
Practice of Medicine.

Chiropractors.

Chiropractors who indicated that they could perform numerous treatments and diagnostic functions in addition to various therapies were engaged in the illegal practice of medicine. *Kuhl v. Arkansas State Bd. of Chiropractic Exmrs.*, 236 Ark. 58, 364 S.W.2d 790 (1963).

Practice of Medicine.

The practice of chiropractic does not come within the meaning of practice of

medicine. *State v. Gallagher*, 101 Ark. 593, 143 S.W. 98 (1912) (decision under prior law).

Evidence indicated that physician's employee who dispensed drugs was practicing medicine within the meaning of this section. *Arkansas State Medical Bd. v. Grimmett*, 250 Ark. 1, 463 S.W.2d 662 (1971).

Ear piercing does not constitute the practice of medicine. *Hicks v. Arkansas State Medical Bd.*, 260 Ark. 31, 537 S.W.2d 794 (1976).

Cited: *Arkansas State Medical Bd. v. Bolding*, 324 Ark. 238, 920 S.W.2d 825 (1996).

17-95-203. Exemptions.

Nothing herein shall be construed to prohibit or to require a license with respect to any of the following acts:

(1) The gratuitous rendering of services in case of emergency;
(2) The rendering of services in this state by a physician lawfully practicing medicine in another state or territory, provided that the physician must possess a license to practice medicine in this state if he or she:

(A) Does not limit such services to an occasional case;

(B) Has any established or regularly used hospital connections in this state; or

(C) Maintains or is provided with for his or her regular use any office or other place for the rendering of those services;

(3) The practice of the following professions, as defined by the laws of this state, which the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., is not intended to limit, restrict, enlarge, or alter the privileges and practice of, as provided by the laws of this state:

(A) Dentistry;

(B) Podiatry;

(C) Optometry;

(D) Chiropractic; or

(E) Cosmetology;

(4) The practice of Christian Science, with or without compensation;
 (5) The performance by commissioned medical officers of the armed forces of the United States or of the United States Public Health Service or of the United States Department of Veterans Affairs of their lawful duties in this state as officers;

(6) The rendering of nursing services by registered or other nurses in the lawful discharge of their duties as such;

(7) The rendering of services by students, interns, or residents in a licensed and approved hospital having an internship or residency training program approved by the American Medical Association or the State Board of Health or the United States Government;

(8) As defined and limited by the laws of this state, the performance of the duties of a:

(A) Physical therapist; or

(B) Massage therapist;

(9) The domestic administration of family remedies;

(10) The practice of lay midwifery as defined in § 17-85-101 et seq.;

or

(11)(A) The practice of medicine within the scope of a physician's duties as an employee of the Federal Bureau of Prisons, if the physician has obtained a license to practice from Arkansas or any other state, territory, the District of Columbia, or Canada.

(B) A physician authorized to practice under subdivision (11)(A) of this section may provide medical treatment or services only to inmates and shall not provide medical treatment or services to other employees of the Federal Bureau of Prisons or any other person.

History. Acts 1957, No. 198, § 4; 1971, No. 53, § 1; 1977, No. 459, § 18; 1983, No. 838, § 3; A.S.A. 1947, § 72-604; Acts 2001, No. 579, § 1; 2001, No. 929, § 5.

Cross References. Lay midwifery, § 17-85-101 et seq.
 Osteopaths, § 17-91-101 et seq.

CASE NOTES

Dentists.

Dentists are not physicians. *Dunhall Pharmaceuticals, Inc. v. State*, 295 Ark. 483, 749 S.W.2d 666 (1988).

Cited: *Arkansas State Medical Bd. v. Bolding*, 324 Ark. 238, 920 S.W.2d 825 (1996).

17-95-204. Perjury.

Any person who shall willfully and knowingly make any false statement to the Arkansas State Medical Board concerning his or her qualifications or authority to practice medicine shall be deemed guilty of perjury and punished as provided by law for those guilty of perjury. Such a person may be indicted and tried for such an offense, either in the county where the affidavit to the statement was made or where the person resides.

History. Acts 1957, No. 198, § 7; A.S.A. 1947, § 72-607.

17-95-205. [Repealed.]

Publisher's Notes. This section, concerning itinerant vendors, was repealed by Acts 2005, No. 915, § 1 and No. 1994, § 527. The section was derived from Acts 1957, No. 198, § 22; A.S.A. 1947, § 72-622.

17-95-206. Out-of-state physicians.

A physician who is physically located outside this state but who through the use of any medium, including an electronic medium, performs an act that is part of a patient care service initiated in this state, including the performance or interpretation of an X-ray examination or the preparation or interpretation of pathological material that would affect the diagnosis or treatment of the patient, is engaged in the practice of medicine in this state for the purposes of this chapter and is subject to this chapter and to appropriate regulation by the Arkansas State Medical Board. This section does not apply to:

- (1) The acts of a medical specialist located in another jurisdiction who provides only episodic consultation services;
- (2) The acts of a physician located in another jurisdiction who is providing consultation services to a medical school;
- (3) Decisions regarding the denial or approval of coverage under any insurance or health maintenance organization plan;
- (4) A service to be performed which is not available in the state;
- (5) A physician physically seeing a patient in person in another jurisdiction; or
- (6) Other acts exempted by the board by regulation.

History. Acts 1997, No. 1353, § 1.

17-95-207. Temporary license for out-of-state physicians.

Any physician who seeks licensure in this state pursuant to the requirements of § 17-95-206, upon submission of the proper credentialing documents to the Arkansas State Medical Board, shall be issued a temporary license to practice medicine in this state until such time as final action is taken by the board on the physician's application.

History. Acts 1997, No. 1353, § 2.

17-95-208. Rules on physician's authority to delegate.

(a) The Arkansas State Medical Board shall adopt rules that establish standards to be met and procedures to be followed by a physician with respect to the physician's delegation of the performance of medical practices to a qualified and properly trained employee who is not licensed or otherwise specifically authorized by the Arkansas Code to perform the practice.

(b) The rules adopted under subsection (a) of this section shall provide that:

(1) The delegating physician remains responsible for the acts of the employee performing the delegated practice;

(2) The employee performing the delegated practice shall not be represented to the public as a licensed physician, licensed nurse, licensed physician's assistant, or other licensed healthcare provider; and

(3) Medical practices delegated under this section shall be performed under the physician's supervision.

(c) Delegation of medical practices under this section may include administration of drugs that do not require substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social sciences as determined by the board.

(d) Rules adopted regarding the delegation of the administration of drugs shall provide for:

(1) The delegated administration of drugs only within the physical boundaries of the delegating physician's offices;

(2) Evaluation of whether delegation is appropriate according to the acuity of the patient involved;

(3) Training and competency requirements that shall be met by the person administering the drugs; and

(4) Other standards and procedures the board considers relevant.

(e) The board shall not adopt rules that:

(1) Authorize a physician to transfer to a health professional other than another physician the physician's responsibility for supervising a delegated medical practice;

(2) Authorize an individual to whom a medical practice is delegated to delegate the performance of that practice to another individual;

(3) Authorize a physician to delegate the administration of anesthesia; or

(4) Conflict with a provision of the Arkansas Code that specifically authorizes an individual to perform a particular practice.

History. Acts 2009, No. 472, § 2.

SUBCHAPTER 3 — ARKANSAS MEDICAL PRACTICES ACT — ARKANSAS STATE MEDICAL BOARD

SECTION.

17-95-301. Creation — Members.

17-95-302. Organization and proceedings.

17-95-303. Powers and duties.

17-95-304. Inspectors — Use of prescriptions, orders, or records.

17-95-305. Disposition of funds.

SECTION.

17-95-306. Criminal background check.

17-95-307. License eligibility.

17-95-308. Waiver.

17-95-309. Background records sealed.

17-95-310. Medical Director of Arkansas State Medical Board — Qualifications.

Cross References. Applicability to osteopathic practitioners, § 17-91-103.

Board members not to be held personally liable for actions as board members, § 17-80-103.

Effective Dates. Acts 1955, No. 65, § 5: approved Feb. 16, 1955. Emergency clause provided: "It is hereby ascertained and declared that the separation of authority among the various medical boards has resulted in confusion and has hindered and impeded the efficient enforcement of the medical practice laws, and that the people of Arkansas are being injured because of such impairment of proper enforcement. An emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force and effect from and after its passage."

Acts 1957, No. 198, § 25: Mar. 11, 1957. Emergency clause provided: "It is determined that the practice of medicine is a profession that vitally affects the peace, health, safety and welfare of every citizen in this state. In order to properly accomplish regulation and supervision thereof, and thus protect our citizens against charlatans and quacks, appropriate restrictive and definitive legislation governing the practice of medicine is not only desirable but necessary. The General Assembly, having determined that, present laws to accomplish this purpose being inadequate, this law is necessary to protect the peace, health, safety and welfare of the citizens of our state; therefore, an emergency is declared to exist and this law shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 15, § 8: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this act are provided; and that, in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby de-

clared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1979, No. 150, § 4: Feb. 20, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the proper enforcement of the drug laws of Arkansas and to the protection of the public that the distribution of narcotic, depressant and stimulant drugs be strictly controlled and that this act is designed to help accomplish this essential purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6, and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an

emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 365, § 8: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this act are provided; and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1985, No. 850, § 3: Apr. 4, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential that the Arkansas State Medical Board consist of members who are representative of the major population elements of this state; that the current laws governing the membership of the Arkansas State Medical Board provide that most appointments made by the Governor be upon recommendation and advice of the Arkansas State Medical Board and include no provision for recommendation to the Governor with respect to appointments recommended by the Physicians' Section of the Arkansas Medical, Dental and Pharmaceutical Association, a long-standing organization representative of professionals in this state; and that the immediate passage of this act is necessary to establish an additional position on the State Medical Board in order to correct this inequity. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 255, § 6: Feb. 27, 1991. Emergency clause provided: "It has been found and determined by the General As-

sembly that it is necessary to include additional representation on the Arkansas State Medical Board to encompass an additional licensed physician and a licensed osteopath at the earliest opportunity to provide the desirable level of balanced views of approach to medical practice in order to provide the citizens of Arkansas with the highest quality medical care available. Therefore, immediate effect should be given this measure and an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 38, § 7: Mar. 11, 1992. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws do not accurately reflect the composition of the Arkansas State Medical Board; and the personnel needs of said Board and the duties of said personnel; that a provision correctly stating and establishing the Arkansas State Medical Board and the personnel and powers of the personnel they are to hire is necessary to ensure the proper enforcement of the provisions governing the practice of medicine in the State of Arkansas; that there is an emergency need for such a provision and that an enactment of the measure will remedy this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved

nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 1716, § 2: Apr. 21, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that in order to fulfill its duties to oversee physician practice in the State of Arkansas, increasingly complex scientific issues are presented to the Arkansas State Medical Board; that in order to make sound decisions in the interests of public health and protection of the citizens of Arkansas, the Arkansas State Medical Board should seek out and apply scientific data from established and respected national sources whenever such data will help resolve any scientific issue before it; and that this act is immediately necessary because the Arkansas State Medical Board meets regularly and frequently considers issues that require the most up to date scientific information and makes decisions that have immediate effect on both practitioners and the public. Therefore, an emergency is declared to exist and this act being immediately nec-

essary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2005, No. 1410, § 3: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Division of Pharmacy Services and Drug Control of the Department of Health investigates licensure complaints for seven (7) professional licensing boards; that the Division of Pharmacy Services and Drug Control has a backlog of about sixty (60) open cases; that the professional work of licensees may be seriously compromised so long as the investigation remains uncompleted; and that the proposed fee increase would enable the hiring of an additional investigator to aid in completion of cases in a timely manner. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005.”

CASE NOTES

Use of Name.

An organization composed of health professionals, including nurse-practitioners, nurse-midwives, midwives, and physician assistants, could not be permitted to use the name “Arkansas Medical Society” where a doctors’ organization uses

the same name. *Arkansas Medical Soc’y v. Arkansas Medical Soc’y*, 287 Ark. 9, 695 S.W.2d 827 (1985).

Cited: *Arkansas State Medical Bd. v. Cross*, 256 Ark. 388, 507 S.W.2d 709 (1974); *Smith v. Bentley*, 493 F. Supp. 916 (E.D. Ark. 1980).

17-95-301. Creation — Members.

- (a) There is created the Arkansas State Medical Board.
- (b)(1)(A) The board shall consist of fourteen (14) members appointed by the Governor for terms of six (6) years.
- (B) The Governor shall consider diversity of practice specialties and geographical areas of practice in making appointments to the board.
- (2)(A)(i) Ten (10) members shall be duly qualified, licensed, and active medical practitioners and appointed upon the advice and recommendation of the Arkansas Medical Society.

(ii) At least two (2) members shall be appointed from each of the state's four (4) congressional districts.

(iii) Two (2) members shall be appointed at large.

(B) Congressional district representation required under this subdivision (b)(2) shall be achieved by appointment as vacancies occur.

(3) One (1) member shall be a licensed practicing physician in this state and shall be appointed upon the advice and recommendation of the Physicians' Section of the Arkansas Medical, Dental, and Pharmaceutical Association.

(4) Two (2) members of the board shall not be actively engaged in or retired from the practice of medicine. One (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly. Both shall be appointed from the state at large subject to confirmation by the Senate. The two (2) positions may not be held by the same person. Both shall be full voting members but shall not participate in the grading of examinations.

(5) One (1) member shall be a duly qualified, licensed, and practicing osteopathic physician and appointed upon the recommendation of the Arkansas Osteopathic Medical Association.

(c)(1) The term of each member shall expire on December 31 of the year designated, and a successor appointee shall be named by the Governor on or before the expiration date of the term so expiring.

(2)(A) No member may serve on the board for more than two (2) full terms or more than thirteen (13) years.

(B) However, this subdivision (c)(2) shall not cut short a term for which a member is serving on August 12, 2005.

(d)(1) Vacancies on the board occurring otherwise than as provided in this section shall be filled by appointment by the Governor within thirty (30) days thereafter.

(2) In the event a vacancy exists in the member position of licensed practicing physician appointed upon the advice and recommendation of the Arkansas Medical Society due to death, resignation, or other cause, a successor member to the position shall be appointed by the Governor for the remainder of the unexpired portion of the term thereof in the same manner as provided in this section for the initial appointment.

(3) In the event a vacancy exists in the member position of licensed practicing physician appointed upon the advice and recommendation of the Physicians' Section of the Arkansas Medical, Dental, and Pharmaceutical Association due to death, resignation, or other cause, a successor member to the position shall be appointed by the Governor for the remainder of the unexpired portion of the term thereof in the same manner as provided in this section for the initial appointment.

(4) In the event a vacancy exists in the member position of the licensed osteopathic physician appointed upon the advice and recommendation of the Arkansas Osteopathic Medical Association due to death, resignation, or other cause, a successor member to the position shall be appointed by the Governor for the remainder of the unexpired portion of the term thereof in the same manner as provided in this subchapter for the initial appointment.

(e) The members of the board shall take the oath prescribed by the Arkansas Constitution for state officers before entering upon the discharge of their duties.

(f)(1) The members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(2) The Executive Secretary of the Arkansas State Medical Board shall receive such additional salary as may be fixed by the board.

(g) Physicians appointed to the board shall:

(1) Remain in active practice for the full term of the appointment; or

(2) Resign if, with more than one (1) year remaining on the appointed term, the physician:

(A) Is no longer actively practicing as a physician; or

(B) Moves his or her business or residence out of the district from which he or she was appointed.

(h)(1) Members of the board may be removed from the office by the Governor:

(A) For good cause pursuant to § 25-16-804;

(B) For cause including dishonorable or unprofessional conduct, abuse of authority, malfeasance, misfeasance, or nonfeasance; or

(C)(i) For any reason that would justify probation, suspension, or revocation of a physician's license to practice medicine under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., which shall be referred directly to the Division of Pharmacy Services and Drug Control of the Department of Health by the Governor for investigation as provided in § 17-80-106.

(ii) The Division of Pharmacy Services and Drug Control of the Department of Health shall prepare a report for the Governor based on its findings.

(2) No member of the board may be involved in the conduct of the investigation except to cooperate with the investigation as required by the investigator.

History. Acts 1955, No. 65, § 2; 1957, No. 198, § 18; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1983, No. 365, § 5; 1985, No. 850, § 1; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-602, 72-602.1, 72-618; Acts 1991, No. 255, §§ 1, 2; 1992 (1st Ex. Sess.), No. 38, § 1; 1997, No. 250, § 166; 2001, No. 464, §§ 2, 3; 2005, No. 2010, §§ 2-4; 2009, No. 1273, § 1.

A.C.R.C. Notes. This section formerly provided that one member be appointed on the recommendation of the Arkansas State Eclectic Medical Society. However, the society no longer exists and, consequently, that provision has been omitted from this section.

Publisher's Notes. The terms of the

members of the Arkansas State Medical Board, other than the representatives of consumers and the elderly, the physician appointed upon the advice and recommendation of the Physicians' Section of the Arkansas Medical, Dental, and Pharmaceutical Association, and the member serving as Executive secretary of the board, are arranged so that one term expires every year.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

Amendments. The 2009 amendment substituted "fourteen (14)" for "thirteen

(13)" in (b)(1)(A), "Ten (10)" for "Nine (9)" in (b)(2)(A)(i), and "Two (2) members" for "One (1) member" in (b)(2)(A)(iv).

Cross References. Reduction of congressional districts, § 25-16-801.

CASE NOTES

Cited: Miller v. Reed, 234 Ark. 850, 355 S.W.2d 169 (1962); Heard v. Payne, 281 Ark. 485, 665 S.W.2d 865 (1984); Arkan-

sas State Medical Bd. v. Bolding, 324 Ark. 238, 920 S.W.2d 825 (1996).

17-95-302. Organization and proceedings.

(a) Within thirty (30) days after their appointment, the members of the Arkansas State Medical Board shall meet and organize by electing a chair, vice chair, and treasurer. The treasurer shall give bond in such amount as may be designated by the board, which may be increased or decreased from time to time, conditioned for the faithful disbursement and accounting of all moneys coming into his or her hands as the treasurer.

(b) The board shall hold its regular meetings at such time as the board shall establish by regulation and shall have the power to call and hold special meetings at such times and places as it deems necessary.

(c) The chair, vice chair, and secretary shall have power to administer oaths for the purpose of performing their powers and duties.

(d) The board shall have a seal bearing the name "Arkansas State Medical Board".

History. Acts 1955, No. 65, § 2; 1979, No. 150, § 1; A.S.A. 1947, § 72-602.

A.C.R.C. Notes. The operation of the bond provision of subsection (a) of this section was suspended by adoption of a self-insured fidelity bond program for pub-

lic officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268 (1984).

CASE NOTES

Cited: Miller v. Reed, 234 Ark. 850, 355 S.W.2d 169 (1962); Heard v. Payne, 281 Ark. 485, 665 S.W.2d 865 (1984).

17-95-303. Powers and duties.

The Arkansas State Medical Board shall:

(1) Make and adopt all rules, regulations, and bylaws not inconsistent with the laws of this state or of the United States and necessary or convenient to perform the duties and to transact the business required by law;

(2) Have authority to promulgate and put into effect such rules and regulations as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein;

(3)(A)(i) Have authority to employ attorneys to represent the board in all legal matters at a compensation approved by the board.

(ii) Contracts for employment of attorneys shall be filed by the Executive Secretary of the Arkansas State Medical Board with the Legislative Council.

(B) The board shall further have authority to request the assistance of the Attorney General and the prosecuting attorneys of Arkansas in such manner as it deems necessary and proper;

(4) Have the authority to employ an executive secretary to carry out the purposes and the mandates of the board and to supervise the other employees of the board;

(5) Have the authority to employ a medical director, who shall hold a valid license to practice medicine in this state, to evaluate medical issues and to assist in investigations pending before the board;

(6) Have the power and authority to employ such secretarial and administrative assistance as may be necessary to carry out the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the duties of the board to protect the people of the State of Arkansas;

(7) Have the power and authority to employ one (1) or more inspectors as may be necessary to carry out the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the duties of the board to protect the people of the State of Arkansas;

(8) Examine, as is provided for by law, all applicants for a license to practice medicine in this state; and

(9) Consider and give deference to data, studies, consensus documents, and conclusions issued by the Centers for Disease Control and Disease Prevention or the National Institutes of Health whenever their data, studies, consensus documents, and conclusions are relevant to any decision made pursuant to the board's powers and duties under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1955, No. 65, § 2; 1957, No. 198, § 18; 1977, No. 15, § 4; 1979, No. 150, § 1; 1983, No. 365, § 5; A.S.A. 1947, §§ 72-602, 72-618; Acts 1992 (1st Ex. Sess.), No. 38, § 2; 2001, No. 464, § 4; 2003, No. 1716, § 1.

A.C.R.C. Notes. Acts 2007, No. 655, § 1, provided: "The Arkansas State Board

of Health's regulatory authority over radiologist assistants and radiology practitioner assistants pursuant to § 17-106-105(a)(1)(C) is transferred to the Arkansas State Medical Board."

Cross References. Lists of practitioners to be made and filed, § 17-80-101.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Businesses, Deference to Data from National Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Business Sources, 26 U. Ark. Little Rock L. Rev. 456.

CASE NOTES

Cited: Miller v. Reed, 234 Ark. 850, 355 S.W.2d 169 (1962); Heard v. Payne, 281 Ark. 485, 665 S.W.2d 865 (1984).

17-95-304. Inspectors — Use of prescriptions, orders, or records.

(a)(1) The Arkansas State Medical Board shall utilize as its employees the investigators and inspectors of the Division of Pharmacy Services and Drug Control of the Department of Health.

(2) The Department of Health is directed to make investigators and inspectors available for those purposes for as long as they may conduct investigations and inspections of prescriptions.

(b)(1)(A) The investigators may obtain copies of prescriptions, orders, and records as admissible evidence without the necessity of the issuance of an administrative inspection warrant or search warrant.

(B) However, investigators must have in their possession an authorization by the Director of the Division of Pharmacy Services and Drug Control of the Department of Health.

(2) The inspectors shall have the duty and authority upon written direction by the Executive Secretary of the Arkansas State Medical Board to investigate, inspect, and make copies of the records, orders, and prescriptions, wherever located, of all persons licensed by the board in order to determine whether or not the persons have:

(A) Violated the laws of the State of Arkansas or of the United States respecting the prescription and use of narcotics and potentially dangerous drugs;

(B) Practiced their profession in such a way as to endanger the general health and welfare of the public; or

(C) Violated the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(3) The licensee may refuse the request of the investigator and not tender copies of the records.

(c)(1) The copies of prescriptions, orders, or records shall not become public records by reason of their use in disciplinary proceedings held by the board, nor shall the patient's or physician's property right to the prescriptions be extinguished by that use.

(2)(A) If the prescriptions, orders, or records are to be used in criminal proceedings, they shall be obtained by the inspectors only on an administrative inspection warrant as authorized by § 5-64-502.

(B) However, no administrative inspection warrant is necessary when the prescriptions, orders, or records are to be used solely for board disciplinary purposes.

(d) The board shall have the power, in lieu of a letter of authority, to issue to the investigators a subpoena to obtain copies of the records referred to in this section, and the investigators will have the authority to serve the subpoena and to collect the records.

(e) If a witness served with a subpoena fails to honor the subpoena, then the board may apply to the circuit court for remedies as provided in the Arkansas Rules of Civil Procedure. The court shall have the power to punish the disobedient witness for contempt as is now provided by law in the trial of civil cases.

(f)(1) The division shall have the authority to collect from the individual board utilizing the services delineated in this section up to fifty dollars (\$50.00) per hour with a maximum of four thousand dollars (\$4,000) in hourly costs per case.

(2) The division shall also have the authority to collect from the individual board utilizing the services delineated in this section for:

(A) Travel expenses at the level for state employees; and

(B) Other out-of-pocket costs incurred by the division in carrying out its investigative task.

(g) The board may collect costs incurred under subsection (f) of this section from the licensees being investigated by the division.

History. Acts 1955, No. 65, § 2; 1979, No. 150, § 1; A.S.A. 1947, § 72-602; Acts 1997, No. 493, § 2; 2005, No. 1410, § 2.

CASE NOTES

Cited: Miller v. Reed, 234 Ark. 850, 355 S.W.2d 169 (1962); Heard v. Payne, 281 Ark. 485, 665 S.W.2d 865 (1984).

17-95-305. Disposition of funds.

(a) All funds received by the Arkansas State Medical Board shall be expended in furtherance of the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq. This includes, but is not specifically limited to, the publication of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., preparing and publishing a compilation of physicians, investigating violations of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., instituting actions to compel compliance with the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., defending actions brought against it as a result of its actions under the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and for such other purposes not inconsistent with the general purposes of the creation of the board as may be directed by the board.

(b)(1) All moneys received by the board shall be disbursed by the Chair of the Arkansas State Medical Board or the Executive Secretary of the Arkansas State Medical Board.

(2) The chair or the executive secretary, or both, shall furnish a surety bond and should keep a true and faithful account of all moneys received and all moneys expended.

(3) The executive secretary shall file annually with the Governor a report of all financial transactions duly audited by an independent accountant.

(c) Any surplus in the treasury of the board at the end of the year shall remain in the treasury and may be expended in succeeding years for the purposes set out in this section.

(d) It shall not be lawful for the board or for any member thereof in any manner whatsoever or for any purpose to charge or obligate the State of Arkansas for payment of any money whatsoever.

History. Acts 1957, No. 198, § 18; 1983, No. 365, § 5; A.S.A. 1947, § 72-618; Acts 1992 (1st Ex. Sess.), No. 38, § 3; 2005, No. 495, § 1.

A.C.R.C. Notes. The operation of subsection (b) of this section as regards the surety bond was suspended by adoption of

a self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The provision may again become effective upon cessation of coverage under that program. See § 21-2-703.

17-95-306. Criminal background check.

(a)(1) Beginning July 1, 2005, every person applying for a license or renewal of a license issued by the Arkansas State Medical Board shall provide written authorization to the board to allow the Department of Arkansas State Police to release the results of a state and federal criminal history background check report to the board.

(2) The applicant shall be responsible for payment of the fees associated with the background checks.

(b)(1) The state background check shall be from the Identification Bureau of the Department of Arkansas State Police.

(2) The federal background check shall:

- (A) Be from the Federal Bureau of Investigation;
- (B) Conform to the applicable federal standards; and
- (C) Include the taking of fingerprints of the applicant.

(c) Upon completion of the criminal background checks required by this section, the Identification Bureau of the Department of Arkansas State Police:

(1) Shall forward to the board all releasable information obtained concerning the applicant; and

(2) May retain the fingerprinting card of the applicant until notified by the board that the person is no longer licensed.

History. Acts 2005, No. 1249, § 1.

17-95-307. License eligibility.

No person shall be eligible to receive or hold a license to practice medicine or another health care profession issued by the Arkansas State Medical Board if the person has pleaded guilty or nolo contendere to or has been found guilty of either an infamous crime that would impact his or her ability to practice medicine in the State of Arkansas or a felony, regardless of whether the conviction has been sealed, expunged, or pardoned.

History. Acts 2005, No. 1249, § 1.

17-95-308. Waiver.

(a) The requirements of § 17-95-307 may be waived by the Arkansas State Medical Board upon the request of:

- (1) An affected applicant for licensure; or
- (2) The person holding the license subject to revocation.

(b) The board may consider the following circumstances when considering a waiver, including, but not limited to:

- (1) The age at which the crime was committed;
- (2) The circumstances surrounding the crime;
- (3) The length of time since the crime;
- (4) Subsequent work history;
- (5) Employment references;
- (6) Character references; and
- (7) Other evidence demonstrating that the applicant does not pose a threat to the health or safety to the public.

History. Acts 2005, No. 1249, § 1.

17-95-309. Background records sealed.

(a) Any background record received by the Arkansas State Medical Board from the Identification Bureau of the Department of Arkansas State Police shall not be available for examination except by:

- (1) An affected applicant for licensure or his or her authorized representative; or
- (2) A person whose license is subject to revocation or his or her authorized representative.

(b) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

History. Acts 2005, No. 1249, § 1.

17-95-310. Medical Director of Arkansas State Medical Board — Qualifications.

The Medical Director of the Arkansas State Medical Board shall:

(1) Have been in full-time clinical practice of medicine in direct patient care within one (1) year of filling the position of medical director;

(2) Have fifteen (15) years of current, continuous full-time medical service immediately prior to the date of appointment, which shall include, but not be limited to, at least ten (10) years of full-time clinical practice in direct patient care, five (5) years of which shall have been in full-time clinical practice in direct patient care in the State of Arkansas;

(3) Have not served on the Arkansas State Medical Board within the past five (5) years; and

(4) Have a comprehensive knowledge of the contemporary, broad-based clinical practice of medicine with experience in direct patient care.

History. Acts 2007, No. 1210, § 5.

A.C.R.C. Notes. Acts 2009, No. 739, § 5, provided: "The Director of the State Medical Board shall:

"(a) have been in full-time clinical practice of medicine in direct patient care within one (1) year of filling the position of Medical Director;

"(b) have fifteen (15) years of current continuous full-time medical service immediately prior to the date of appointment which shall include, but not be limited to, at least ten (10) years of full-time clinical practice in direct patient care, five (5) years of which shall have been in full-time clinical practice in direct patient care in the State of Arkansas;

"(c) have not served on the Arkansas State Medical Board within the past five (5) years; and

"(d) have a comprehensive knowledge of the contemporary, broad-based clinical practice of medicine with experience in direct patient care."

Acts 2010, No. 115, § 5, provided: "DIRECTOR QUALIFICATIONS AND LIMITATIONS. The Director of the State Medical Board shall:

"(a) have been in full-time clinical practice of medicine in direct patient care within one (1) year of filling the position of Medical Director;

"(b) have fifteen (15) years of current continuous full-time medical service immediately prior to the date of appointment which shall include, but not be limited to, at least ten (10) years of full-time clinical practice in direct patient care, five (5) years of which shall have been in full-time clinical practice in direct patient care in the State of Arkansas;

"(c) have not served on the Arkansas State Medical Board within the past five (5) years; and

"(d) have a comprehensive knowledge of the contemporary, broad-based clinical practice of medicine with experience in direct patient care."

SUBCHAPTER 4 — ARKANSAS MEDICAL PRACTICES ACT — LICENSING

SECTION.

- 17-95-401. License required.
- 17-95-402. Penalties — Injunction.
- 17-95-403. Application — Qualifications.
- 17-95-404. Examinations.
- 17-95-405. Credentials.
- 17-95-406. Temporary permits.
- 17-95-407. Recording of certificate.

SECTION.

- 17-95-408. Annual registration.
- 17-95-409. Denial, suspension, or revocation — Grounds.
- 17-95-410. Denial, suspension, or revocation — Proceedings.
- 17-95-411. Fees.
- 17-95-412. Educational licenses.

Cross References. Applicability to osteopathic practitioners, § 17-91-103.

Continuing education requirements, § 17-80-104.

Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1957, No. 198, § 25: Mar. 11, 1957. Emergency clause provided: "It is determined that the practice of medicine is a profession that vitally affects the peace, health, safety and welfare of every citizen in this state. In order to properly accomplish regulation and supervision thereof, and thus protect our citizens against charlatans and quacks, appropriate restrictive and definitive legislation governing the practice of medicine is not only desirable but necessary. The General Assembly, having determined that, present laws to accomplish this purpose being inadequate, this law is necessary to protect the peace, health, safety and welfare of the citizens of our state; therefore, an emergency is declared to exist and this law shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 53, § 2: approved Feb. 5, 1971. Emergency clause provided: "It having been found and declared by the General Assembly of the State of Arkansas that there is a shortage of physicians in certain areas of the State of Arkansas, that the passage of this act will make available to the people of the State of Arkansas increased medical services, and that such increased medical services are immediately and urgently needed by the people of the State of Arkansas; and this act being necessary for the immediate preservation of the public peace, health and safety of the people of the State of Arkansas, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1971, No. 178, § 2: approved Feb. 26, 1971. Emergency clause provided: "It having been found and declared by the General Assembly of the State of Arkansas that there is a shortage of physicians in certain areas of the State of Arkansas and that the passage of this act will make more physicians available for practice in the State of Arkansas, which is highly desirable for the health care of the people of the State of Arkansas, and this act, being necessary for the immediate preservation of the public peace, health and safety of the people of the State of Arkansas, an emergency is hereby declared to

exist, and this act shall be in full force and effect from and after its passage."

Acts 1971, No. 472, § 3: Apr. 1, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that many rural communities in this state are without the services of a qualified and licensed physician; that trained physicians who have received their medical instruction and who have qualified as licensed physicians in the Philippine Islands, a former possession of the United States, are available to provide medical services in said communities under the supervision of qualified and licensed physicians in this state; and that the immediate passage of this act is necessary to provide vitally needed medical services in rural communities of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 486, § 2: Mar. 28, 1973. Emergency clause provided: "It is hereby ascertained and declared that in some instances persons are being overcharged for medical services provided to them and, in other instances, persons are being over-treated for ailments, and that such practices should be immediately halted. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 708, § 2: Mar. 28, 1981. Emergency clause provided: "It is hereby ascertained and declared that advertising by physicians should be conducted in a manner to uphold the integrity of the profession and to prevent exploitation of the ill or suffering persons of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 876, § 2: Mar. 28, 1981. Emergency clause provided: "It is hereby ascertained and declared that advertising by physicians should be conducted in a manner to uphold the integrity of the profession and to prevent exploitation of

the ill or suffering persons of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 334, § 3: Mar. 3, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the Constitution of the State of Arkansas prohibits deficit spending; that the Arkansas State Medical Board is an agency of state government covered by such prohibition; that the fees which such board may charge are not adequate to provide funding of essential operations of such board; that the provisions of this act will allow such board to continue the provision of services essential to the well-being of the People of the State of Arkansas; and that delay in the effectiveness of this act would cause irreparable harm to the proper administration and provision of essential governmental services. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 890, § 3: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly that the Constitution of the State of Arkansas prohibits deficit spending; that the Arkansas State Medical Board is an agency of state government covered by such prohibition; that the fees which such board may charge are not adequate to provide funding of essential operations of such board; that the provisions of this act will allow such board to continue the provision of services essential to the well-being of the people of the State of Arkansas; and that delay in the effectiveness of this act would cause irreparable harm to the proper administration and provision of essential governmental services. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 503, § 4: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that certain fees charged by the State Medical Board for examinations and for licensing and reregistration of certain professions are inadequate to cover the costs incurred by the board in administering such examinations and issuing and renewing certain licenses; that it is essential that revenues derived from fees produce sufficient funds to cover the expenses of the board; that this Act is designed to increase some of such charges and to thereby produce the necessary funds and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 362, § 4: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws regulating the practice of medicine do not provide for the imposition of a fine if one is found guilty of violating the practice act; that a provision broadening the punitive powers of the Arkansas State Medical board is necessary to insure the proper enforcement of the provisions governing the practice of medicine in the State of Arkansas; that there is an emergency need for such a provision and that an enactment of the measure will remedy this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 45, § 8: Mar. 17, 1992. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws regulating the practice of medicine do not provide for an examination that is in existence that can be administered to an individual desiring a license or a temporary license to practice medicine in the State of Arkansas; that a provision setting forth the powers of the Arkansas State Medical Board in selecting an examination to be administered to applicants who seek a license to practice medicine or seek a temporary license to practice medicine in the State of Arkansas is necessary to ensure the proper enforcement and protection of citizens of the State of Arkansas; that there is an emergency need for such a

provision and that an enactment of the measure will remedy this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 275, § 5: Feb. 26, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly that individuals who hold a license to practice medicine in the State of Arkansas should be permitted to be reinstated upon the payment of fees and a penalty. Therefore, immediate effect should be given this measure and an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 276, § 6: Feb. 26, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly that it is necessary to provide licensure by credentials to individuals desiring a license to practice medicine in the State of Arkansas; therefore, immediate effect should be given to this measure and an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 290, § 5: Mar. 1, 1993. Emergency clause provided: “It is hereby

found and determined by the Seventy-Ninth General Assembly that it is necessary to provide the ability to collect fines from those individuals licensed by the Arkansas State Medical Board who have violated the Professional Practice Act to the Arkansas State Medical Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2007, No. 1058, § 10: Apr. 4, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that amendments and clarifications are needed in order for all rural communities to have more equal access to physician providers, for the Rural Medical Practice Student Loan and Scholarship Board to have more flexibility in working with loan recipients to remedy contractual obligations, and for attempts at resolution to occur; and that it is imperative that changes be made in state law to remedy these problems. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

Ark. L. Rev. Case Notes — Equity — Injunction — Unlicensed Practice of a Profession, 11 Ark. L. Rev. 177.

CASE NOTES

Cited: Arkansas State Medical Bd. v. Cross, 256 Ark. 388, 507 S.W.2d 709 (1974); Smith v. Bentley, 493 F. Supp. 916 (E.D. Ark. 1980).

17-95-401. License required.

If any person who does not possess a valid license to practice medicine within this state and who is not exempted from the licensing require-

ments does any of the acts constituting the practice of medicine, he or she shall be deemed to be practicing medicine without complying with the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1957, No. 198, § 4; 1971, No. 53, § 1; 1983, No. 838, § 3; A.S.A. 1947, § 72-604.

RESEARCH REFERENCES

ALR. Tort claim for negligent credentialing of physician. 98 A.L.R.5th 533.

CASE NOTES

ANALYSIS

Chiropractors.
Itinerant Vendors.

Chiropractors.

Chiropractors who indicated that they could perform numerous treatments and diagnostic functions in addition to various therapies were engaged in the illegal prac-

tice of medicine. *Kuhl v. Arkansas State Bd. of Chiropractic Exmrs.*, 236 Ark. 58, 364 S.W.2d 790 (1963).

Itinerant Vendors.

An itinerant vendor of drugs who does not profess to cure or treat diseases is not required to obtain a license. *Williams v. State*, 99 Ark. 149, 137 S.W. 927 (1911) (decision under prior law).

17-95-402. Penalties — Injunction.

(a)(1) Every person who practices or attempts to practice medicine in any of its branches or who performs or attempts to perform any surgical operation for any person or upon any person within this state without first having complied with the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., shall be deemed guilty of a misdemeanor.

(2) Upon conviction he or she shall be punished by a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for a period of not less than one (1) month nor more than eleven (11) months, or by both fine and imprisonment. Each day of such a practice shall constitute a separate offense.

(b) The courts of record of this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of medicine in a proceeding by the Arkansas State Medical Board or any member thereof, or by any citizen of this state, in the county in which the alleged unlawful practice occurred or in which the defendant resides. The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., but the remedy of injunction shall be in addition to liability to criminal prosecution.

(c) It is declared that any person who practices or attempts to practice medicine in the State of Arkansas without first obtaining a license authorizing him or her to so practice medicine is a public nuisance, and it is declared that the illegal practice of medicine in violation of the laws of the State of Arkansas is a public nuisance and is detrimental to the health, safety, security, and welfare of the people of the State of Arkansas.

History. Acts 1957, No. 198, §§ 19-21;
A.S.A. 1947, §§ 72-619 — 72-621.

CASE NOTES

ANALYSIS

Chiropractors.
Dentists.

Chiropractors.

Chancery court had jurisdiction to hear and determine the question whether or not an injunction should issue to prevent chiropractors from practicing medicine, independent of any proceeding of chiropractic board to revoke the chiropractic licenses of the chiropractors. *Miller v. Reed*, 234 Ark. 850, 355 S.W.2d 169 (1962).

Dentists.

The administrative remedy available to the State Medical Board before the State Board of Dental Examiners on its claim that a dentist, with the aid of the State Board of Dental Examiners, engaged in the unlawful practice of medicine was inadequate and, therefore, the chancery court had jurisdiction over the matter. *Arkansas State Med. Bd. v. Schoen*, 338 Ark. 762, 1 S.W.3d 430 (1999).

Cited: *Arkansas State Medical Bd. v. Bolding*, 324 Ark. 238, 920 S.W.2d 825 (1996).

17-95-403. Application — Qualifications.

(a)(1) Every person desiring a license to practice medicine shall make application to the Arkansas State Medical Board. The application shall be verified by oath and shall be in such form as shall be prescribed by the board.

(2) The application shall be accompanied by the license fee and such documents, affidavits, and certificates as are necessary to establish that the applicant possesses the qualifications prescribed by this section, apart from any required examination by the board.

(3) The burden of proof shall be upon the applicant, but the board may make such independent investigation as it may deem advisable to determine whether the applicant possesses the qualifications and whether the applicant has at any time committed any of the acts or offenses herein defined as unprofessional conduct.

(b) No person shall be granted a license to practice medicine in the State of Arkansas unless he or she:

(1) Is at least twenty-one (21) years of age;

(2) Is of good moral character and has not been guilty of acts constituting unprofessional conduct as defined in § 17-95-409;

(3)(A) Is a graduate of:

(i) A recognized United States or Canadian medical school whose entrance requirements and course of instruction have been approved

by the Council on Medical Education of the American Medical Association;

(ii) A Canadian eclectic medical school which has been approved by the Council on Medical Education of the National Eclectic Medical Association; or

(iii)(a) A foreign medical school whose entrance requirements and course of instruction have been approved by the board.

(b) He or she must also have:

(1) Served three (3) years as an intern or resident in an accredited postgraduate medical education program in the United States; or

(2) Completed one (1) year as an intern or resident in an accredited postgraduate medical education program in the United States and be currently enrolled in an accredited postgraduate medical program in Arkansas.

(B) However, the board at such time as it deems expedient may require of every applicant for licensure:

(i) A properly verified certificate that he or she has served one (1) year of internship in a general accredited hospital; or

(ii) A certificate of his or her service in an accredited postgraduate medical education program as described in subdivision (b)(3)(A)(iii)(b) of this section; and

(4) Has successfully passed an examination approved by the board as set forth in its rules and regulations.

History. Acts 1957, No. 198, §§ 5, 6; 1971, No. 178, § 1; 1977, No. 199, § 1; A.S.A. 1947, §§ 72-605, 72-606; Acts 1992 (1st Ex. Sess.), No. 45, § 1; 1993, No. 1219, § 22; 2005, No. 498, § 1.

Publisher's Notes. Acts 1977, No. 199, § 5, provided that it was the intent of the act to abolish the State Healing Arts Board created by Acts 1959, No. 187 and

to remove the requirement that a person take and pass a basic science test as a condition for licensure as a physician. It was further the intent of the act that no agency, person, or board in the state would have the authority to require any person to take and pass the test formerly administered by the State Healing Arts Board as a condition for licensure as a physician.

17-95-404. Examinations.

(a) The Arkansas State Medical Board by and through its rules and regulations will approve and designate the examinations to be given to those individuals who desire a license to practice medicine in the State of Arkansas. The board will further set forth the standards by rule and regulation for successful completion of the examination for licensure.

(b) Examinations for a license to practice medicine shall be held not fewer than one (1) time in each year at such times and places as may be specified by the board.

(c) If in the opinion of the board the applicant possesses the necessary qualifications, the board shall issue to him or her a certificate.

(d) If an applicant fails to meet the minimum grade requirements in his or her examination, he or she may be reexamined upon a filing of a new application and the payment of a required fee.

History. Acts 1957, No. 198, § 8; A.S.A. No. 45, § 2; 1999, No. 490, § 1; 2005, No. 1947, § 72-608; Acts 1992 (1st Ex. Sess.), 495, § 2.

17-95-405. Credentials.

(a) A legally licensed physician and surgeon who has been issued a license to practice medicine in another state where the requirements for licensure are equal to those established by the State of Arkansas may be permitted by the Arkansas State Medical Board to practice his or her profession in this state without taking an examination upon payment of a fee as provided in § 17-95-411.

(b) The issuance of a license by credentials by the board shall be at the sole discretion of the board, and the board may provide such rules or regulations governing such an admission as may be deemed necessary by or desirable to the board.

History. Acts 1957, No. 198, § 9; 1977, No. 199, § 2; A.S.A. 1947, § 72-609; Acts 1993, No. 276, § 1.

Publisher's Notes. Acts 1977, No. 199, § 5, provided that it was the intent of the act to abolish the State Healing Arts Board created by Acts 1959, No. 187 and to remove the requirement that a person

take and pass a basic science test as a condition for licensure as a physician. It was further the intent of the act that no agency, person, or board in the state would have the authority to require any person to take and pass the test formerly administered by the State Healing Arts Board as a condition for licensure as a physician.

RESEARCH REFERENCES

ALR. Tort claim for negligent credentialing of physician. 98 A.L.R.5th 533.

17-95-406. Temporary permits.

(a) In cases of emergency and to prevent hardship, the Secretary of the Arkansas State Medical Board may issue a temporary permit to practice medicine upon payment of the fee required for applicants after satisfying himself or herself that the applicant has all the qualifications and meets all the requirements of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq. A temporary permit shall be valid only until the next meeting of the Arkansas State Medical Board and shall expire at that time.

(b)(1) The board shall issue a temporary permit to practice medicine to any medical doctor licensed and qualified to practice medicine in the Philippines, a former possession of the United States, provided that the temporary permit issued shall authorize the person to practice medicine in this state only under the supervision of a duly licensed and qualified physician in this state.

(2) The temporary permit shall be for a period of not more than two (2) years. If at the end of the two (2) years the person to whom a temporary permit has been issued has not met the qualifications and has not passed the prescribed examinations for licensure to practice medicine in this state as provided in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., it

shall be unlawful for the board to grant an extension of or to issue a new temporary permit to that person.

(3) Nothing in this subsection shall prohibit the board from suspending or revoking the temporary permit of any person to whom a temporary permit is issued under the provisions of this subsection on any grounds which by law and regulation would be grounds to revoke or suspend the license of a person licensed to practice medicine in this state, or for such periods of time as the person to whom the temporary permit is issued is not under the supervision of a licensed and qualified physician in this state.

(4) As used in this subsection, a person shall be deemed to be under the supervision of a licensed and qualified physician of this state when the physician shall notify the board in writing of his or her supervision of the medical practice of the person to whom the temporary permit is issued. It shall not be necessary that the person practice medicine out of the same office or in the same city or town in which the supervisory physician practices or resides.

History. Acts 1957, No. 198, § 10;
1971, No. 472, § 1; A.S.A. 1947, § 72-610.

17-95-407. Recording of certificate.

Prior to practicing medicine, every person receiving a certificate from the Arkansas State Medical Board shall have the certificate recorded in the office of the county clerk where he or she proposes to practice. When the person moves to another county for the purpose of continuing the practice of medicine, he or she shall file for record with the county clerk of the county to which he or she moves a certified copy of his or her certificate.

History. Acts 1957, No. 198, § 12;
A.S.A. 1947, § 72-612.

CASE NOTES

Cited: *Miller v. Reed*, 234 Ark. 850, 355
S.W.2d 169 (1962).

17-95-408. Annual registration.

(a) The annual license or reregistration fee of a physician licensed by the Arkansas State Medical Board to practice medicine in the State of Arkansas shall be paid before or during the birth month of the license holder beginning in 1998, and each year thereafter. During the implementation year of 1998, fees shall be prorated.

(b) Failure to pay the annual reregistration fee as provided in this section by the last day of the birth month of the license holder shall cause the license to practice medicine in the State of Arkansas of any person so failing to pay the reregistration fee to expire automatically.

(c) Any delinquent licentiate may be reinstated by paying all delinquent fees and a penalty of fifty dollars (\$50.00) for each year or part thereof that he or she has been delinquent.

(d)(1) If any licentiate fails for three (3) consecutive years to pay the reregistration fee, it shall be the duty of the board, without hearing or notice, to cancel and revoke his or her license, subject to reinstatement.

(2) If application for reinstatement is made, the board shall consider the moral character and professional qualifications of the applicant upon notice and hearing before ordering reinstatement. Unless such a showing shall thereupon be made to the board as would entitle the applicant to the issuance of an original license, reinstatement shall be denied.

(3) The applicant for reinstatement shall file a written application and pay the same fees required for the issuance of an original license.

(e) Any person practicing his or her profession while his or her license is suspended or after it has been canceled pursuant to this section shall be subject to the penalties prescribed by law.

History. Acts 1957, No. 198, §§ 15-17; 1993, No. 275, § 1; 1997, No. 313, § 2; 1983, No. 334, § 2; 1985, No. 890, § 2; 2005, No. 495, § 3.
A.S.A. 1947, §§ 72-615 — 72-617; Acts

17-95-409. Denial, suspension, or revocation — Grounds.

(a)(1) The Arkansas State Medical Board may revoke an existing license, impose penalties as listed in § 17-95-410, or refuse to issue a license in the event the holder or applicant, as the case may be, has committed any of the acts or offenses defined in this section to be unprofessional conduct.

(2) The words “unprofessional conduct”, as used in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., mean:

(A)(i) Conviction of any crime involving moral turpitude or conviction of a felony.

(ii) The judgment of any such conviction, unless pending upon appeal, shall be conclusive evidence of unprofessional conduct;

(B) Resorting to fraud, misrepresentation, or deception in applying for or securing a license to practice medicine, in taking the examination for the license, or in seeking a renewal of a license;

(C) Aiding or abetting an unlicensed person to practice medicine;

(D) Procuring or aiding or abetting in procuring a wrongful and criminal abortion;

(E) Violation of the laws of the United States or the State of Arkansas regulating the possession, distribution, or use of narcotic or controlled drugs classed in Schedules I-V of the Controlled Substances Act of 1970 or the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, including any amendments thereto;

(F) Habitual indulgence in the use of alcohol to such an extent as to render himself or herself incapable of exercising that degree of skill

and judgment in the treatment of his or her patients which the moral trust and confidence in him or her demands;

(G) Grossly negligent or ignorant malpractice;

(H) Habitual, intemperate, or excessive use of narcotics or of any other habit-forming drugs;

(I) Representing to a patient that a manifestly incurable condition of sickness, disease, or injury can be permanently cured;

(J) Becoming physically or mentally incompetent to practice medicine to such an extent as to endanger the public;

(K) Insanity or mental disease, if evidenced by an adjudication or by voluntary commitment to an institution for treatment of a mental disease or as determined by an examination conducted by three (3) impartial psychiatrists retained by the board;

(L) Soliciting for patronage; advertising for patronage in a false, fraudulent, deceptive, or misleading manner; advertising the quality of medical services; or advertising illegal procedures and practices;

(M) Offering, undertaking, attempting, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine or representing, directly or indirectly, that he or she can treat, operate on, or prescribe for any human condition by a method, means, or procedure which he or she refuses to divulge upon demand to the board;

(N) The willful betraying of a professional secret;

(O) Persistent and flagrant overcharging or overtreating of patients;

(P) Violating a rule of the board;

(Q) Violating a term of probation or an order previously imposed by the board;

(R) Having been found in violation of a statute or a rule governing the practice of medicine by a medical licensing authority or agency of another state; and

(S) Committing an ethical violation as determined by the board by rule.

(b)(1)(A) Upon receipt of a final order from another agency of the State of Arkansas or a final order from a court of this state after all appeal rights have been exhausted that finds a physician licensed to practice medicine in this state has breached the loan contract entered into by the physician under § 6-81-701 et seq., the board may suspend the license of that physician.

(B) The suspension shall be for a period of years equivalent to the number of years that the recipient is obligated to practice medicine in a rural area but has not so practiced and until the loan with interest together with any civil money penalties, as reduced by each full year of medical practice according to the terms of the loan contract, is paid in full.

(2) Upon notification from the Dean of the College of Medicine of the University of Arkansas for Medical Sciences and the Director of the Department of Health that exigent circumstances warrant a waiver of the suspension, the board shall reinstate the holder's license.

(3) In deciding whether to suspend a holder's medical license, the board, at its discretion, may adopt any or all recommendations, findings of fact, and conclusions of law issued or adopted by the Arkansas Rural Medical Practice Student Loan and Scholarship Board, an arbitrator, or a court.

History. Acts 1957, No. 198, § 13; 1965, No. 85, § 1; 1973, No. 486, § 1; 1981, No. 708, § 1; 1981, No. 876, § 1; A.S.A. 1947, § 72-613; Acts 1993, No. 1219, § 23; 1995, No. 1257, § 3; 2001, No. 464, § 5; 2007, No. 123, § 3; 2007, No. 1058, § 10; 2009, No. 1178, § 1.

A.C.R.C. Notes. Acts 1995, No. 1257, § 4, provided: "The provisions of this act shall not apply to any person entering a Rural Medical Practice Student Loan prior to the 1995-96 school year or to any subsequent Rural Medical Practice Student Loan contracts entered into by those persons."

Amendments. The 2007 amendment by No. 123, in (a)(2), deleted "are declared to" preceding "mean"; and added (a)(2)(R) and made related and stylistic changes.

The 2007 amendment by No. 1058 rewrote (b)(1)(A); substituted "but has

not...the loan contract" for "and the suspension shall continue until the loan, with interest thereon" in (b)(1)(B); added (b)(3); and made related changes.

The 2009 amendment, substituted "rule" for "regulation" in (a)(2)(P); deleted "or regulation" following "rule" in (a)(2)(R); inserted (a)(2)(S); and made related changes.

U.S. Code. Schedules I-V of the Controlled Substances Act of 1970 referred to in this section are codified as 21 U.S.C. § 812.

Cross References. Doctors, physicians, and surgeons required to report treatment of knife and gunshot wounds to peace officer, § 12-12-602.

Violation of Narcotic Drug Law, notice to board, revocation of license, § 20-64-215.

CASE NOTES

ANALYSIS

Constitutionality.

Aiding and Abetting Illegal Practice.

City Ordinance.

Controlled Substances.

Gross Negligence.

Negligent Malpractice.

Perjury.

Powers of Board.

Propriety of Discipline.

Constitutionality.

Former section was not unconstitutional as depriving a person whose license was revoked of his property without due process of law. *State Medical Board v. McCrary*, 95 Ark. 511, 130 S.W. 544 (1910); *Eclectic State Medical Bd. v. Beatty*, 203 Ark. 294, 156 S.W.2d 246 (1941) (decision under prior law).

Aiding and Abetting Illegal Practice.

Evidence of drug dispensing by physician's employee was sufficient to show that physician was aiding and abetting an unlicensed person to practice medicine in

violation of this section. *Arkansas State Medical Bd. v. Grimmett*, 250 Ark. 1, 463 S.W.2d 662 (1971).

City Ordinance.

City ordinance prohibiting the employment of solicitors, cappers, or drummers by physicians was not inconsistent with former similar section. *Burrow v. City of Hot Springs*, 85 Ark. 396, 108 S.W. 823 (1908) (decision under prior law).

Controlled Substances.

Suspension of doctor's license was supported by substantial evidence of issuance of excessive prescriptions for controlled substance. *Arkansas State Medical Bd. v. Elliott*, 263 Ark. 86, 563 S.W.2d 427 (1978), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978).

Gross Negligence.

Although the State Medical Board did not differentiate in its finding between "ignorant malpractice" or "gross negligence," there was substantial evidence of an extreme departure from the ordinary standard of care, which constituted gross

negligence. *Livingston v. Arkansas State Medical Bd.*, 288 Ark. 1, 701 S.W.2d 361 (1986).

Negligent Malpractice.

Evidence that doctor gave prescription to same healthy patient under different names established "negligent or ignorant malpractice." *Arkansas State Medical Bd. v. Elliott*, 263 Ark. 86, 563 S.W.2d 427 (1978), cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978).

Evidence of violation of former subdivision (7) [now (a)(2)(G)] of this section held insufficient. *Hollabaugh v. Arkansas State Medical Bd.*, 43 Ark. App. 83, 861 S.W.2d 317 (1993).

Perjury.

Board may revoke license for perjury and, where physician was convicted of perjury, it was duty of court to revoke license. *Tyler v. State*, 191 Ark. 41, 83 S.W.2d 555 (1935) (decision under prior law).

Powers of Board.

Contention that present board members would have no power to review the issuance of a license granted by a former board composed of different members was untenable. *Eclectic State Medical Bd. v. Beatty*, 203 Ark. 294, 156 S.W.2d 246 (1941) (decision under prior law).

The contention that the board is without power to revoke any license issued before the passage of subchapters 2-4 of this chapter is unsound. *Bockman v. Arkansas State Medical Bd.*, 229 Ark. 143, 313 S.W.2d 826 (1958).

A regulation of the board was arbitrary on its face and invalid insofar as it restricted the number of registered nurse practitioners that could be employed by a physician or a group of physicians and declared that a violation of the restriction constituted malpractice. The board had no authority to create a nonstatutory basis for the revocation of a physician's license. *Arkansas State Nurses Ass'n v. Arkansas State Medical Bd.*, 283 Ark. 366, 677 S.W.2d 293 (1984).

Propriety of Discipline.

In conducting review, pursuant to § 25-15-212, of a decision of the Arkansas State Medical Board, which revoked a physician's license based on a finding that he violated Regulation 2.7 by becoming sexually involved with a patient, the court found substantial evidence to uphold the decision because the evidence showed that the physician became romantically involved with a patient and subsequently ordered prescription medication for her; however, revocation of the physician's license to practice under this section was arbitrary and capricious based on the physician's unblemished professional record and based on the fact that he did not try to willfully violate the Regulations. Thus, the revocation was modified to a one-year suspension. *Collie v. Ark. State Med. Bd.*, 370 Ark. 180, 258 S.W.3d 367 (2007).

Cited: *Hake v. Arkansas State Medical Bd.*, 237 Ark. 506, 374 S.W.2d 173 (1964); *Arkansas State Medical Bd. v. Cross*, 256 Ark. 388, 507 S.W.2d 709 (1974); *Smith v. Bentley*, 493 F. Supp. 916 (E.D. Ark. 1980).

17-95-410. Denial, suspension, or revocation — Proceedings.

(a) Any person may file a complaint with the Arkansas State Medical Board against any person having a license to practice medicine in this state charging the licensee with:

(1) Failure to have the necessary qualifications as set out in § 17-95-403; and

(2) The commission of any of the offenses enumerated and described as unprofessional conduct in § 17-95-409.

(b) If the board finds a probable violation of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., or the regulations of the board, the board shall review the complaint and issue an order and notice of hearing to the licensee.

(c)(1) The order and notice of hearing shall set forth a specification of charges in sufficient detail that the person accused shall have full and

complete disclosure of any alleged acts of misconduct, impropriety, or lack of qualification.

(2) When an order and notice of hearing is issued, the board or its agent shall send by registered mail to the person's last address of record a copy of the order and notice of hearing along with a written notice of the time and place of the hearing and a statement advising the person that he or she may be present in person or by counsel to offer evidence and be heard in his or her defense.

(3) The time fixed for the hearing shall not be less than thirty (30) days from the date of the mailing of the notice.

(d) At the time and place fixed for a hearing before the board, the board shall receive evidence upon the subject under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his or her defense. The board shall not be bound by strict or technical rules of evidence but shall consider all evidence fully and fairly. However, all oral testimony considered by the board must be under oath.

(e)(1) At the conclusion of the hearing, the board shall first decide whether the accused is guilty of the charges against him or her and then decide on appropriate disciplinary action.

(2) If the accused is found not guilty, the board shall dismiss the charges.

(3) If the accused is found guilty, the board may do one (1) or more of the following:

(A) Revoke his or her license;

(B) Suspend his or her license for a period not to exceed one (1) year;

(C) Issue a reprimand;

(D) Impose a probation allowing the licensee to continue practicing under terms and conditions found to be in the best interest of the accused and the general public; or

(E) Levy a fine of up to one thousand dollars (\$1,000) per violation of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and collect out-of-pocket costs of investigation incurred by the board to conduct the disciplinary hearing.

(4) If the board suspends the license, it may issue a temporary license for whatever duration it decides and renew this temporary license at its discretion.

(f) Appeals may be had by either of the parties from the decision of the board in the manner now provided by law. All evidence considered by the board shall be reduced to writing and available for the purpose of appeal or certiorari to any of the parties of the hearing.

(g) Nothing in this section shall be construed so as to deprive any person of his or her rights without a full, fair, and impartial hearing.

History. Acts 1957, No. 198, § 14; § 1; 1993, No. 290, § 1; 2001, No. 464, A.S.A. 1947, § 72-614; Acts 1989, No. 362, § 6.

Cross References. Peer review committees, immunity from civil action, § 20-9-501 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Rules of Evidence in Administrative Proceedings, 15 Ark. L. Rev. 138.

CASE NOTES

ANALYSIS

Complaint.
Continuance.
Evidence.
Judicial Review.
Jurisdiction.
Laches.
Licensee's Rights.
Presumption.
Res Judicata.

Complaint.

Charges preferred against physician by the board are not required to be as specifically set forth as in pleadings in courts. *Eclectic State Medical Bd. v. Beatty*, 203 Ark. 294, 156 S.W.2d 246 (1941) (decision under prior law).

Complaint seeking revocation of physician's license was not so vague and uncertain as not to inform physician of the nature of what he would be confronted with at the hearing. *Eclectic State Medical Bd. v. Beatty*, 203 Ark. 294, 156 S.W.2d 246 (1941) (decision under prior law).

Continuance.

Grant of continuance by board was a matter of grace and not a right, and the board had authority to temporarily restrict physician's prescribing practices as a condition to granting the continuance. *Arkansas State Medical Bd. v. Leonard*, 267 Ark. 61, 590 S.W.2d 849 (1979).

Evidence.

Affidavits of physicians were competent evidence since revocation proceeding was not a criminal prosecution but an administrative proceeding, and the board members were not required to observe technical rules of evidence. *Bockman v. Arkansas State Medical Bd.*, 229 Ark. 143, 313 S.W.2d 826 (1958).

This section requires that the evidence heard by the board shall be reduced to

writing, and the record must contain some evidence to substantiate the board's finding; where the record was insufficient to reveal the basis for the board's finding that the defendant was mentally and emotionally incompetent to practice and had been guilty of malpractice, the action of the board in revoking defendant's license must be reversed. *Hake v. Arkansas State Medical Bd.*, 237 Ark. 506, 374 S.W.2d 173 (1964).

Judicial Review.

Board's action in revocation proceedings will not be set aside on certiorari unless there is an entire absence of substantial evidence to sustain the findings, in which case the board's action is deemed to be arbitrary. *Bockman v. Arkansas State Medical Bd.*, 229 Ark. 143, 313 S.W.2d 826 (1958).

Jurisdiction.

Jurisdiction to hear evidence and to revoke or refuse to revoke a physician's license was vested by law in the Eclectic State Medical Board (now Arkansas State Medical Board), and a chancery court was without jurisdiction to enjoin the board from hearing and determining that question. *Eclectic State Medical Bd. v. Beatty*, 203 Ark. 294, 156 S.W.2d 246 (1941) (decision under prior law).

Where statute gave circuit court power to issue writs of certiorari to any officer or board to correct erroneous or void proceedings, circuit court had jurisdiction over Eclectic State Medical Board (now Arkansas State Medical Board), and, upon finding that board was failing or refusing to act in accordance with court's order to conduct a revocation hearing, court could act in lieu of board. *Schirmer v. Cockrill*, 223 Ark. 817, 269 S.W.2d 300 (1954) (decision under prior law).

Laches.

Proceeding to revoke physician's license on ground that his diploma was illegally and fraudulently obtained and license was obtained by fraud and deception, initiated nine years after issuance of license, was not barred by laches since board had right to proceed after discover of fraud. *Eclectic State Medical Bd. v. Beatty*, 203 Ark. 294, 156 S.W.2d 246 (1941) (decision under prior law).

Licensee's Rights.

Although the Arkansas Administrative Procedure Act, § 25-15-201 et seq., gives to the respondent in an administrative proceeding the right to appear by counsel and to present and cross-examine witnesses, the board was under no duty to warn a respondent, who had been notified to appear and show cause why his medical license should not be revoked, of the rights. *Arkansas State Medical Bd. v. Eliott*, 263 Ark. 86, 563 S.W.2d 427 (1978),

cert. denied, 439 U.S. 862, 99 S. Ct. 183, 58 L. Ed. 2d 171 (1978).

Presumption.

Where there is no evidence to show that board revoked license without a hearing, it will be presumed that the board acted lawfully. *Tyler v. State*, 191 Ark. 41, 83 S.W.2d 555 (1935) (decision under prior law).

Res Judicata.

Prior decision of board refusing to revoke license because of criminal convictions involving moral turpitude did not bar charge that license was fraudulently procured when such charge was not raised in prior suit. *Bockman v. Arkansas State Medical Bd.*, 229 Ark. 143, 313 S.W.2d 826 (1958).

Cited: *Arkansas State Nurses Ass'n v. Arkansas State Medical Bd.*, 283 Ark. 366, 677 S.W.2d 293 (1984); *Finch v. Neal*, 316 Ark. 530, 873 S.W.2d 519 (1994).

17-95-411. Fees.

The Arkansas State Medical Board shall charge the following fees:

(1)(A) For application for license by examination or by credentials, four hundred dollars (\$400).

(B) In the event that it is determined by the board that the credentials of the applicant are insufficient or the applicant withdraws his or her application before taking the examination, the board may return such portion of the fee as allowed by the regulations of the board;

(2) For a temporary license or permit, fifty dollars (\$50.00) for each six-month period;

(3) For certification of licentiate to another state, fifteen dollars (\$15.00); and

(4)(A) For annual license or reregistration fee, seventy dollars (\$70.00). This fee is to be imposed upon each physician who holds a license to practice medicine in the State of Arkansas.

(B) The annual license or reregistration fee may be changed by the board, provided that the amount shall be fixed by the board not less than sixty (60) days in advance of January 1 of each year.

History. Acts 1957, No. 198, §§ 11, 15; Acts 1987, No. 503, § 1; 1991, No. 593, 1983, No. 334, §§ 1, 2; 1985, No. 890, § 1; 1993, No. 276, § 2; 1995, No. 721, §§ 1, 2; A.S.A. 1947, §§ 72-611, 72-615; § 1.

17-95-412. Educational licenses.

(a) The Arkansas State Medical Board may issue an educational license to practice medicine to any physician who meets:

(1) The qualifications and requirements set forth in the rules of the board; and

(2) The conditions and requirements set forth in subsection (b) of this section.

(b)(1) The physician shall:

(A) Submit an application to the board;

(B) Provide such information as the board may by rule require;

(C) Pay a licensure fee that the board may set by rule to cover the costs of administering the program; and

(D) Be serving as a faculty member or shall be affiliated with and under the supervision of a faculty member at an academic medical program established by and under the control of the University of Arkansas for Medical Sciences.

(2) The educational license to practice medicine in the State of Arkansas shall authorize the practice of medicine only within the clinical and educational programs established and administered by the University of Arkansas for Medical Sciences.

(c)(1) The board shall issue each educational license for a period of one (1) year.

(2) At the end of the one (1) year, the license shall lapse, and the physician shall make an additional application to the board if the physician desires to continue the practice of medicine.

(d) A physician who obtains an educational license to practice medicine in the State of Arkansas shall comply with the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and all rules of the board.

History. Acts 2005, No. 497, § 1.

SUBCHAPTER 5 — CRITICAL MEDICAL SHORTAGE AREAS**SECTION.**

17-95-501. Legislative intent.

17-95-502. Definitions.

17-95-503. Temporary license.

SECTION.

17-95-504. Remedial training.

17-95-505. Nonliability of board.

Effective Dates. Acts 1977, No. 415, § 8: Mar. 11, 1977. Emergency clause provided: "It is hereby found by the General Assembly that a serious problem exists in the distribution of practicing physicians in the State of Arkansas which has resulted in critical deficiencies in primary medical care in at least one-third of the

state's 75 counties and numerous rural communities and contiguous medical service areas. It is further found and determined by the General Assembly that a need exists to recruit and retain practicing physicians for these areas. Therefore, an emergency is hereby declared to exist and this act being necessary for the imme-

diate preservation of the public health, safety and welfare shall be in effect from and after its passage and approval.”

Acts 1992 (1st Ex. Sess.), No. 45, § 8: Mar. 17, 1992. Emergency clause provided: “It is hereby found and determined by the General Assembly that existing laws regulating the practice of medicine do not provide for an examination that is in existence that can be administered to an individual desiring a license or a temporary license to practice medicine in the State of Arkansas; that a provision setting forth the powers of the Arkansas State Medical Board in selecting an examina-

tion to be administered to applicants who seek a license to practice medicine or seek a temporary license to practice medicine in the State of Arkansas is necessary to ensure the proper enforcement and protection of citizens of the State of Arkansas; that there is an emergency need for such a provision and that an enactment of the measure will remedy this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

17-95-501. Legislative intent.

(a) The General Assembly finds and declares that this subchapter is necessary to assist those areas of critical medical shortage in the State of Arkansas in recruiting and retaining physicians to meet the primary medical care needs of the citizens residing in these areas.

(b)(1) It is the intent of the General Assembly to grant authority to the Arkansas State Medical Board to issue temporary licenses to practice medicine in defined areas of critical medical shortage for a specified period of time and under required conditions to be defined in § 17-95-503.

(2) It is the further intent of the General Assembly that the board utilize every means at its disposal under the laws of this state, including the authority granted by this subchapter, to increase the number of practicing physicians in the areas of critical medical shortage as defined in § 17-95-502.

(3) It is the further intent of this subchapter that neither the board nor the Executive Secretary of the Arkansas State Medical Board, when acting in behalf of the board and under authority granted to him or her by the board, shall be liable, collectively or individually, for civil damages from claims pertaining to the administration of this subchapter.

History. Acts 1977, No. 415, § 1; A.S.A. 1947, § 72-628; Acts 2005, No. 495, § 4.

17-95-502. Definitions.

As used in this subchapter:

(1) “Critical medical shortage area” is an area wherein there is a critical shortage of physicians for the area’s population as defined by the Department of Health, Education, and Welfare in the Federal Register, Volume 41, No. 13, dated July 6, 1976, and as updated by the Department of Health;

(2) "E.C.F.M.G." is an examination for graduates of foreign medical schools prepared and administered by the Education Council for Foreign Medical Graduates;

(3) "FLEX" is the Federal Licensing Examination prepared and issued semiannually by the Federation of State Medical Boards of the United States, Inc. The Federal Licensing Examination includes three (3) parts: the basic science, the clinical science, and the clinical competency average. Successful passage of the Federal Licensing Examination with an overall weighted average of seventy-five (75) is required for medical licensure by the Arkansas State Medical Board; and

(4) "Temporary license" is a license issued by the board to practice medicine for a period of twelve (12) months in an area of critical medical shortage as defined in subdivision (1) of this section. A temporary license may be renewable by the board under the conditions and requirements of this subchapter for additional periods of twelve (12) months not to exceed the limitations set forth in § 17-95-504.

History. Acts 1977, No. 415, § 2; A.S.A. 1947, § 72-629; Acts 2005, No. 495, § 5.

17-95-503. Temporary license.

(a) The Arkansas State Medical Board may issue a temporary license to any physician who meets the qualifications and requirements for medical licensure as established by the board except for successful passage of the examination as prescribed by the rules and regulations of the board. However, the physician must fulfill the following additional conditions and requirements to be eligible for temporary licensure:

(1) The physician must practice medicine in an area of critical medical shortage in Arkansas; and

(2) The physician, if a graduate of a foreign medical school, must have satisfactorily passed the Education Council for Foreign Medical Graduates examination.

(b) To be eligible for a renewal of a temporary license by the board, the physician must fulfill the following requirements to be administered by the board:

(1) The physician must submit a written request for the renewal to the board;

(2) The physician must agree to repeat the examination for licensure during the twelve-month term of the renewed temporary license; and

(3) The physician must continue to fulfill the conditions and requirements of this subchapter for temporary licensure during the term of the renewed licensure.

(c) The board shall review the physician's progress toward successfully passing the examination for licensure, as well as the physician's performance in the community where he or she is practicing medicine prior to renewing the physician's temporary license.

History. Acts 1977, No. 415, §§ 3, 4; A.S.A. 1947, §§ 72-630, 72-631; Acts 1992 (1st Ex. Sess.), No. 45, § 3.

17-95-504. Remedial training.

(a) A temporary license may be granted to an eligible physician for not more than three (3) twelve-month terms.

(b)(1) If after that time the physician has not satisfactorily passed the examination for licensure, the Arkansas State Medical Board, in collaboration with the Dean of the College of Medicine of the University of Arkansas for Medical Sciences, shall review the physician's performance and areas of deficiency on the examination for licensure and shall prescribe a plan of remedial training for the physician.

(2) The physician must carry out the prescribed plan before being eligible for either a regular license based on successful passage of the examination for licensure or another period of temporary licensure under the same provisions and requirements as were originally applied for his or her temporary license under the provisions of this subchapter.

History. Acts 1977, No. 415, § 5; A.S.A. 1947, § 72-632; Acts 1992 (1st Ex. Sess.), No. 45, § 4.

17-95-505. Nonliability of board.

In the application of the authorities and provisions of this subchapter, neither the Arkansas State Medical Board, either individually or collectively, nor the Executive Secretary of the Arkansas State Medical Board, when acting on behalf of the board, shall be held liable for civil damages from claims pertaining to the administration of the provisions of this subchapter.

History. Acts 1977, No. 415, § 6; A.S.A. 1947, § 72-633; Acts 2005, No. 495, § 6.

SUBCHAPTER 6 — PUBLIC ACCESS TO AUTOMATED EXTERNAL DEFIBRILLATION ACT OF 1999

SECTION.

17-95-601 — 17-95-605. [Repealed.]

17-95-601 — 17-95-605. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2005, No. 273, § 2. The subchapter was derived from the following sources:

17-95-601. Acts 1999, No. 101, § 1.

17-95-602. Acts 1999, No. 101, § 2.

17-95-603. Acts 1999, No. 101, § 3.

17-95-604. Acts 1999, No. 101, § 4.

17-95-605. Acts 1999, No. 101, § 5.

SUBCHAPTER 7 — TREATMENT OF CHRONIC INTRACTABLE PAIN

SECTION.

17-95-701. Title.

17-95-702. Findings.

17-95-703. Definitions.

17-95-704. Arkansas State Medical
Board — Treatment —
Prohibitions.

SECTION.

17-95-705. Pain Management Review
Committee — Membership
— Duties.

17-95-706. Scope.

17-95-707. Immunity — Criminal pros-
ecution.**17-95-701. Title.**

This subchapter shall be known and may be cited as the “Chronic Intractable Pain Treatment Act”.

History. Acts 2003, No. 1405, § 1.

17-95-702. Findings.

The General Assembly finds that:

(1) Pain management plays an important role in good medical practice;

(2) Physicians should recognize the need to make pain relief accessible to all patients with chronic intractable pain; and

(3) Physicians should view pain management as a regular part of their medical practice for all patients with chronic intractable pain.

History. Acts 2003, No. 1405, § 1.

17-95-703. Definitions.

As used in this subchapter:

(1) “Board” means the Arkansas State Medical Board;

(2) “Chronic intractable pain” means a pain state for which the cause of the pain cannot be removed or otherwise treated and for which no relief or cure has been found after reasonable efforts by a physician;

(3)(A) “Dangerous or controlled drugs” means drugs used for pain relief, including, but not limited to:

(i) Opioids; and

(ii) Other drugs classified under Schedules II, III, IV, or V by the United States Food and Drug Administration.

(B) “Dangerous or controlled drugs” does not include any substance the prescription of which is illegal under federal law;

(4) “Disciplinary action” means any remedial or punitive sanctions imposed on a licensed physician by the board;

(5) “Patient” means a person seeking medical diagnosis and treatment; and

(6) “Physician” means a licensee of the board.

History. Acts 2003, No. 1405, § 1.

17-95-704. Arkansas State Medical Board — Treatment — Prohibitions.

(a)(1) A physician shall not be subject to disciplinary action by the Arkansas State Medical Board solely for prescribing dangerous or controlled drugs for the relief of chronic intractable pain.

(2)(A)(i) Any allegation of improper prescribing determined to require a board hearing shall be referred to the Pain Management Review Committee before any board hearing or action.

(ii)(a) However, in exceptional limited substantive instances requiring immediate action to protect the public health, an emergency action under § 25-15-211(c) may be implemented.

(b) The implementation of an emergency action under § 25-15-211(c) shall in no way be used by the board to circumvent, void, supplant, or otherwise limit the role of the committee as provided in this subchapter.

(B) The board shall provide the committee all necessary documentation for the review process in a timely manner.

(3) The board shall direct the committee to use the criteria under subsections (d) and (e) of this section to review a physician's conduct in regard to prescribing, administering, ordering, or dispensing pain medications and other drugs necessary to treat chronic intractable pain.

(4)(A) If the board determines that an allegation or a question regarding a physician's prescribing does not justify a board hearing, in lieu of a board hearing, the board may refer a physician to the committee for review and recommendations to the board.

(B) The review and recommendations under subdivision (a)(4)(A) of this section shall not adversely affect the physician's license or licensure status.

(b) The board shall:

(1) Make reasonable efforts to notify health care providers under its jurisdiction of the existence of this subchapter;

(2) Inform any health care provider licensed by the board and investigated regarding the provider's practices in the management of pain of the existence of this subchapter; and

(3)(A) In a disciplinary hearing, present opinion evidence from a full-time active practice physician in direct patient care who is knowledgeable in pain management.

(B) The physician has the right to present testimony from a full-time active practice physician in direct patient care who is knowledgeable in pain management.

(c)(1) In lieu of a finding of gross and ignorant malpractice, the board after a hearing may incrementally impose sanctions as follows:

(A) Monitor prescribing habits of the physician not to exceed six (6) months;

(B) Require the physician to voluntarily surrender his or her United States Drug Enforcement Agency license to the board for a specified period of time not to exceed three (3) months;

(C) Suspend the physician's license, stay the suspension, and require monitoring of prescribing habits;

(D) Revoke the physician's license, stay revocation, and require monitoring of the physician's prescribing habits for a specified time; and

(E) Revoke the physician's license for serious violations of statutes and regulations.

(2) With a finding of severe violation of statutes and regulations, the board may initially impose the more severe sanctions.

(3) At any level of sanction, the board may require continuing medical education hours in proper prescribing habits.

(d) Based upon evaluation and management of a patient's individual needs, a physician may:

(1) Treat a patient who develops chronic intractable pain with a dangerous or controlled drug to relieve the patient's pain;

(2) Continue to treat the patient for as long as the pain persists;

(3) Treat the pain by managing it with dangerous or controlled drugs in amounts or combinations that may not be appropriate for treating another medical condition;

(4) Administer large doses of dangerous or controlled drugs for pain management if the benefit of relief outweighs the risk of the large dose; and

(5) Administer a large dose of a dangerous or controlled drug even if its use may increase the risk of death if the purpose is not to cause or assist in a patient's death.

(e) A physician may not:

(1) Prescribe or administer dangerous or controlled drugs intended to manage chronic intractable pain to treat a patient for chemical dependency on drugs or controlled substances;

(2) Prescribe or administer dangerous or controlled drugs to a person the physician knows to be using drugs for nontherapeutic purposes;

(3) Prescribe or administer dangerous or controlled drugs to a person for other than legitimate medical purposes; or

(4)(A) Cause or assist in causing the suicide, euthanasia, or mercy killing of any individual.

(B) However, causing or assisting in causing the suicide, euthanasia, or mercy killing of any individual does not include prescribing, dispensing, or administering medical treatment for the purpose of alleviating pain or discomfort even if that use may increase the risk of death so long as the treatment is not furnished for the purpose of causing or assisting in causing the death of the individual.

History. Acts 2003, No. 1405, § 1;
2005, No. 2164, § 1.

CASE NOTES

Cited: Boyle v. State, 363 Ark. 356, 214 S.W.3d 250 (2005).

17-95-705. Pain Management Review Committee — Membership — Duties.

(a) There is created the Pain Management Review Committee, appointed by the Arkansas State Medical Board.

(b) The committee shall consist of five (5) members who are full-time active physicians in direct patient care, two (2) of whom may be board-certified pain management specialists and three (3) of whom may be physicians with significant pain management in their practices or with a degree in pharmacy, appointed by the board from a list provided by the Arkansas Osteopathic Medical Association, the Arkansas Medical Society, and the Arkansas Pain Society.

(c) The committee shall:

(1) Have committee representation from the Arkansas Osteopathic Medical Association, the Arkansas Medical Society, and the Arkansas Pain Society to develop guidelines for investigations of complaints regarding conduct in violation of this subchapter;

(2) Review complaints on an individual patient-needs basis regarding physicians treating chronic intractable pain in violation of this subchapter; and

(3)(A) Provide an objective critique to the board for board determination in a timely manner and if so determined, before the board's disciplinary hearing.

(B) In order to ensure a fair, impartial, and objective board hearing, no board member shall be:

(i) Present while the committee reviews allegations of improper prescribing; or

(ii) Involved in any way in the committee's deliberations.

History. Acts 2003, No. 1405, § 1; 2005, No. 2164, § 2.

17-95-706. Scope.

This subchapter does not condone, authorize, or approve mercy killing or euthanasia, and no treatment authorized by this subchapter may be used for mercy killing or euthanasia.

History. Acts 2003, No. 1405, § 1.

17-95-707. Immunity — Criminal prosecution.

No physician shall be subject to criminal prosecution for prescribing or administering controlled substances under appropriate criteria in the course of treatment of a person for chronic intractable pain.

History. Acts 2003, No. 1405, § 1.

CHAPTER 96

PODIATRIC MEDICINE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS BOARD OF PODIATRIC MEDICINE.
3. LICENSING.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-95-101 et seq.

Effective Dates. Acts 1997, No. 966, § 17: Mar. 31, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly of the State of Arkansas that the statutes regulating the licensure of podiatrists are outdated in part and that the passage of the act before June of 1997 is required in order to guarantee that these laws will apply to persons taking the podiatric medical examination in June.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Validity, construction, and application of podiatry or chiropody statutes. 45 A.L.R.4th 888.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Medical malpractice: Who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malprac-

tice. 12 A.L.R.5th 1.

False or fraudulent statements or non-disclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner. 32 A.L.R.5th 57.

Allowance of punitive damages in medical malpractice actions. 35 A.L.R.5th 145.

Medical malpractice in connection with diagnosis, care, or treatment of diabetes. 43 A.L.R.5th 87.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., § 4 and § 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-96-101. Definitions.

17-96-102. Exemptions.

SECTION.

17-96-103. Unlawful acts — Penalties.

17-96-104. Professional corporations.

Effective Dates. Acts 1937, No. 187, § 7: approved Mar. 3, 1937. Emergency clause provided: "Whereas the immediate enactment of laws which will tend to make more efficient the practice of chi-

ropody is vital to the health of the citizens of the state, an emergency is declared to exist, and this law shall take effect and be in force from and after its passage."

17-96-101. Definitions.

As used in this chapter:

(1) "Board" means the Arkansas Board of Podiatric Medicine;

(2) "Podiatric medicine" means the diagnosis and medical, mechanical, and surgical treatment of ailments of the human foot and ankle; and

(3) "Podiatrist" means a physician legally licensed to practice podiatric medicine. However, no podiatrist shall amputate the human foot or perform nerve or vascular grafting or administer any anesthetic other than a local anesthetic. All ankle surgery performed above the level of the foot other than skin and skin structures shall be performed in a facility accredited by either Medicare or by the Joint Commission on Accreditation of Healthcare Organizations.

History. Acts 1923, No. 610, §§ 1, 7, 9; 1937, No. 187, §§ 3, 4; Pope's Dig., §§ 10845, 10853, 12110, 12116, 12118; Acts 1973, No. 31, §§ 1, 5, 7; 1983, No. 429, §§ 1, 7, 9; A.S.A. 1947, §§ 72-301, 72-307, 72-309; Acts 1997, No. 966, § 1; 1999, No. 1370, § 1.

Publisher's Notes. Acts 1973, No. 31, § 8, provided that the act would not apply to physicians or surgeons licensed in the State of Arkansas, nor to surgeons of the United States Army, Navy, Marine Corps, Air Force, or Public Health Service, when in actual performance of their duties.

17-96-102. Exemptions.

This chapter shall not apply to physicians or surgeons licensed in the State of Arkansas, nor to the surgeons of the United States Army, Navy, and the United States Public Health Service, when in actual performance of their duties.

History. Acts 1923, No. 610, § 11; Pope's Dig., §§ 10855, 12120; A.S.A. 1947, § 72-311.

17-96-103. Unlawful acts — Penalties.

(a) Any person who shall unlawfully obtain registration under this chapter, whether by false or untrue statements contained in the application to the Arkansas Board of Podiatric Medicine or by presenting to the board a fraudulent diploma, certificate for license, or one fraudulently obtained, or by practicing without any registration or certificate shall be guilty of a Class A misdemeanor.

(b) Except as otherwise provided in this section, any person who shall swear falsely to any affidavit or oral testimony made or given by

virtue of the provisions of this chapter or the regulations of the board shall be guilty of perjury and upon conviction shall be subject to all the pains and penalties of perjury.

(c) Any person who shall knowingly violate any of the provisions of this chapter, upon conviction shall be fined a sum not exceeding one thousand dollars (\$1,000) or be imprisoned in the county jail not to exceed thirty (30) days, or be both fined and imprisoned.

History. Acts 1923, No. 610, §§ 5, 10; 1937, No. 187, § 2; Pope's Dig., §§ 10854, 12114, 12119; Acts 1973, No. 31, § 3; 1983, No. 429, § 5; A.S.A. 1947, §§ 72-305, 72-310; Acts 1997, No. 966, § 2; 2005, No. 1994, § 202.

Publisher's Notes. As to inapplicability of 1973 amendment to certain physicians and surgeons, see Publisher's Notes to § 17-96-101.

17-96-104. Professional corporations.

(a) Podiatrists duly licensed to practice as such by the Arkansas Board of Podiatric Medicine may form professional corporations and practice podiatric medicine under and in accordance with the Arkansas Professional Corporation Act, § 4-29-201 et seq.

(b) It shall be unlawful for any foreign corporation organized to practice podiatric medicine to attempt to practice podiatric medicine in this state. However, this subsection shall not prohibit podiatrists from associating themselves together in the same suite of offices and practicing podiatric medicine as partners or individuals.

History. Acts 1973, No. 31, § 9; 1977, No. 157, §§ 1, 2; A.S.A. 1947, §§ 72-312.1, 72-312.2; Acts 1997, No. 966, § 3.

ity of 1973 amendment to certain physicians and surgeons, see Publisher's Notes to § 17-96-101.

Publisher's Notes. As to inapplicabil-

SUBCHAPTER 2 — ARKANSAS BOARD OF PODIATRIC MEDICINE

SECTION.

17-96-201. Creation — Members.

17-96-202. Organization and proceedings.

17-96-203. Payment of expenses — Compensation of members and employees.

SECTION.

17-96-204. Rules on podiatrist's authority to delegate.

Cross References. Board members not to be held personally liable for actions as board members, § 17-80-103.

Effective Dates. Acts 1981, No. 717, § 3; Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and

welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the

immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is neces-

sary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-96-201. Creation — Members.

(a)(1) The Governor shall appoint an examining board to consist of five (5) members appointed on September 1, for terms of three (3) years. All members shall be residents of the state for a period of one (1) or more years.

(2) Three (3) members shall be podiatrists and shall have been actually engaged in the practice of podiatric medicine immediately preceding their appointment. They shall be appointed upon recommendation of the Arkansas Podiatric Medical Association.

(3) Two (2) members of the board shall not be actively engaged in or retired from the profession of podiatric medicine. One (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly. Both shall be appointed from the state at large subject to confirmation by the Senate. The two (2) positions may not be held by the same person. Both shall be full voting members but shall not participate in the grading of examinations.

(b) All vacancies on the board shall be filled by the Governor to serve for the unexpired term of the member whose place is rendered vacant.

History. Acts 1923, No. 610, § 2; Pope's Dig., §§ 10846, 12111; Acts 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1983, No. 429, § 2; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-302; Acts 1997, No. 966, § 4.

Publisher's Notes. The terms of the members of the Arkansas Board of Podiatric Medicine, other than the representa-

tives of consumers and the elderly, are arranged so that one term expires on August 31 of every year.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

17-96-202. Organization and proceedings.

(a)(1) The Arkansas Board of Podiatric Medicine shall choose one (1) of its members as president and one (1) as secretary-treasurer at each annual meeting to be held in June.

(2) The board may meet more often if necessary in the discretion of the board at such times and places as it may deem proper for the examination of applicants who may wish to practice in this state and for the transaction of any other business that may come before it.

(3)(A) The board shall make and adopt all necessary rules, regulations, and bylaws necessary or convenient to perform its duties and to transact business as required by law.

(B) The rules adopted under subdivision (a)(3)(A) of this section shall authorize the delegation of certain medical practices to persons other than podiatrists.

(b) The secretary-treasurer shall execute to the board a bond with approved security for the faithful performance of his or her duty.

(c)(1) The board shall keep a record book in which shall be registered the names, addresses, and license numbers of all persons legally entitled to practice in the State of Arkansas.

(2) Proceedings of the board shall be recorded in a minute book to be open at all reasonable times to public inspection.

(d) Three (3) members of the board of which two (2) shall be podiatrists shall constitute a quorum for the transaction of business.

History. Acts 1923, No. 610, § 3; Pope's Dig., §§ 10847, 12112; Acts 1983, No. 429, § 3; A.S.A. 1947, § 72-303; Acts 1997, No. 966, § 5; 2009, No. 472, § 3.

A.C.R.C. Notes. The operation of subsection (b) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and

employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

Amendments. The 2009 amendment, in (a)(3), inserted (a)(3)(B) and redesignated the remaining text accordingly.

17-96-203. Payment of expenses — Compensation of members and employees.

(a) The Arkansas Board of Podiatric Medicine is empowered to incur whatever expenses it may deem necessary or expedient in performing its functions, and it may employ whatever assistants it may deem necessary or expedient and fix their compensation.

(b) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(c) All of the disbursements provided for in this section shall be made out of the fees and fines collected by the board.

History. Acts 1923, No. 610, § 8; Pope's Dig., §§ 10852, 12117; Acts 1973, No. 31, § 6; 1983, No. 429, § 8; A.S.A. 1947, § 72-308; Acts 1997, No. 250, § 167.

Publisher's Notes. Acts 1973, No. 31, § 8, provided that the act would not apply

to physicians or surgeons licensed in the State of Arkansas, nor to surgeons of the United States Army, Navy, Marine Corps, Air Force, or Public Health Service, when in actual performance of their duties.

17-96-204. Rules on podiatrist's authority to delegate.

(a) The Arkansas Board of Podiatric Medicine shall adopt rules that establish standards to be met and procedures to be followed by a podiatrist with respect to the podiatrist's delegation of the performance of medical practices to a qualified and properly trained employee who is not licensed or otherwise specifically authorized by the Arkansas Code to perform the practice.

(b) The rules adopted under subsection (a) of this section shall provide that:

(1) The delegating podiatrist is responsible for the acts of the employee performing the delegated practice;

(2) The employee performing the delegated practice shall not be represented to the public as a licensed podiatrist, licensed nurse, licensed podiatrist's assistant, or other licensed healthcare provider; and

(3) Medical practices delegated under this section shall be performed under the podiatrist's supervision.

(c) Delegation of medical practices under this section may include administration of drugs that do not require substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social sciences as determined by the board.

(d) Rules adopted regarding the delegation of the administration of drugs shall provide for:

(1) The delegated administration of drugs only within the physical boundaries of the delegating podiatrist's offices;

(2) Evaluation of whether delegation is appropriate according to the acuity of the patient involved;

(3) Training and competency requirements that shall be met by the person administering the drugs; and

(4) Other standards and procedures the board considers relevant.

(e) The board shall not adopt rules that:

(1) Authorize a podiatrist to transfer to a health professional other than another physician the podiatrist's responsibility for supervising a person who is performing a delegated medical practice;

(2) Authorize an individual to whom a medical practice is delegated to delegate the performance of that practice to another individual;

(3) Authorize a podiatrist to delegate the administration of anesthesia; or

(4) Conflict with a provision of the Arkansas Code that specifically authorizes an individual to perform a particular practice.

History. Acts 2009, No. 472, § 4.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-96-301. License required — Penalty for unlawful practice.
17-96-302. Application.
17-96-303. Qualification of applicants.
17-96-304. Examinations.
17-96-305. Temporary license.

SECTION.

- 17-96-306. Renewal — Continuing education requirement.
17-96-307. Recording and display of license.
17-96-308. Revocation.

Cross References. Licenses and permits, removal or disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1937, No. 187, § 7: approved Mar. 3, 1937. Emergency clause provided: "Whereas the immediate

enactment of laws which will tend to make more efficient the practice of chiropody is vital to the health of the citizens of the state, an emergency is declared to exist, and this law shall take effect and be in force from and after its passage."

RESEARCH REFERENCES

Ark. L. Rev. Case Notes — Equity — Injunction — Unlicensed Practice of a Profession, 11 Ark. L. Rev. 177.

17-96-301. License required — Penalty for unlawful practice.

(a) It shall be unlawful for any person to profess to be a podiatrist or to practice or assume the duties incident to podiatric medicine unless licensed to do so by the Arkansas Board of Podiatric Medicine.

(b)(1) If any person shall use the name or title "podiatrist", "chiropodist", "D.S.C.", "D.P.M.", "foot specialist", or any other word, abbreviation, or title to that person's name indicating or designed to indicate the qualifications to practice podiatric medicine without first obtaining from the board a license authorizing the practice of podiatric medicine in this state, it shall be prima facie evidence of practicing podiatric medicine within the meaning of this chapter.

(2) Upon conviction, the person shall be guilty of a Class A misdemeanor and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not less than three (3) months nor more than one (1) year, or both. The fine and imprisonment are to be at the discretion of the court or jury.

(3) Each separate day on which any person so practices or attempts to practice or holds out to so practice, or does both, without the registration and certificate as provided in this chapter shall constitute a separate and distinct offense.

History. Acts 1923, No. 610, § 9; 1937, No. 187, § 4; Pope's Dig., §§ 10853, 12118; Acts 1973, No. 31, § 7; 1983, No.

429, § 9; A.S.A. 1947, § 72-309; Acts 1997, No. 966, § 6; 2005, No. 1994, § 244.

Publisher's Notes. Acts 1973, No. 31,

§ 8, provided that the act would not apply to physicians or surgeons licensed in the State of Arkansas, nor to surgeons of the

United States Army, Navy, Marine Corps, Air Force, or Public Health Service, when in actual performance of their duties.

17-96-302. Application.

(a) All persons who may wish to practice podiatric medicine in this state shall make application, upon a form authorized by the Arkansas Board of Podiatric Medicine and furnished by it, to the Secretary of the Arkansas Board of Podiatric Medicine for a license, to be subscribed to by the applicant.

(b) The applicant shall file with the secretary at least two (2) months prior to an examination an approved application, on a form furnished by the board covering the applicant's personal history and preliminary and professional education and such other evidence of qualification as the board may require.

(c) All applicants for examination who shall furnish the board with proper proof of their education and qualifications, upon payment of a fee to be established by the board in an amount not to exceed two hundred dollars (\$200), shall be examined and, if found qualified, shall be registered and receive in testimony thereof a certificate signed by the members of the board.

History. Acts 1923, No. 610, §§ 4, 5; 1937, No. 187, §§ 1, 2; Pope's Dig., §§ 12113, 12114; Acts 1973, No. 31, §§ 2, 3; 1983, No. 429, §§ 4, 5; A.S.A. 1947, §§ 72-304, 72-305; Acts 1997, No. 966, § 7.

Publisher's Notes. As to inapplicability of 1973 amendment to certain physicians and surgeons, see Publisher's Notes to § 17-96-301.

17-96-303. Qualification of applicants.

(a) No person shall be entitled to take any examination for such registration unless that person shall furnish the Arkansas Board of Podiatric Medicine with satisfactory proof that he or she:

(1) Is twenty-one (21) years of age or over;

(2) Is of good moral character; and

(3) Has received a license or certificate of graduation from a legally incorporated, regularly established school of podiatric medicine recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association within the states, territories, districts, and provinces of the United States or within any foreign country.

(b) No applicant shall be entitled to such registration and certificate unless the applicant shall have completed prior to the beginning of the applicant's course in podiatric medicine a minimum of three (3) years in an accredited university or college of the liberal arts or the sciences.

(c) A diploma issued by an accredited school of podiatric medicine, approved by the American Podiatric Medical Association bestowing the degree "Doctor of Podiatric Medicine" shall be recognized as a qualification under this chapter only in the event that the diploma represents

the actual standards of preliminary and professional education established by the board.

(d)(1) A certificate issued by an accredited podiatric residency program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association as proof of the satisfactory completion of a minimum of a one (1) year postgraduate residency program.

(2) A podiatrist who graduated prior to 1990 and can show proof of continuous practice since graduation is exempt from the residency requirement.

(3) Podiatrists who are licensed to practice in the State of Arkansas prior to 1997 are exempt from the residency requirement.

History. Acts 1923, No. 610, § 4; 1937, No. 187, § 1; Pope's Dig., §§ 10848, 12113; Acts 1973, No. 31, § 2; 1983, No. 429, § 4; A.S.A. 1947, § 72-304; Acts 1997, No. 966, § 8.

Publisher's Notes. As to inapplicability of 1973 amendment to certain physicians and surgeons, see Publisher's Notes to § 17-96-301.

17-96-304. Examinations.

(a) The Arkansas Board of Podiatric Medicine may make such rules and regulations governing the conduct of the examinations as it shall deem necessary, and willful violation of the rules and regulations shall subject the applicant to the loss of the examination fee.

(b)(1) Examinations shall be in the English language and shall be written and clinical.

(2) The board shall approve and designate the examinations to be given to those individuals who desire a license to practice podiatric medicine in the State of Arkansas. The board shall set forth the standards for successful completion of the examination for licensure.

(c)(1) An applicant who fails to pass an examination satisfactory to the board and is therefore refused registration shall be entitled to a reexamination within six (6) months after the refusal.

(2) The examination shall be at a meeting of the board called for the examination of applicants.

(3) The applicant shall make payment of an additional fee to be established by the board in an amount not to exceed one hundred dollars (\$100) for each reexamination.

(4) Two (2) such reexaminations shall exhaust the privilege under the original application.

History. Acts 1923, No. 610, § 5; 1937, No. 187, § 2; Pope's Dig., §§ 10849, 12114; Acts 1973, No. 31, § 3; 1983, No. 429, § 5; A.S.A. 1947, § 72-305; Acts 1997, No. 966, § 9.

Publisher's Notes. As to inapplicability of 1973 amendment to certain physicians and surgeons, see Publisher's Notes to § 17-96-301.

17-96-305. Temporary license.

(a) A temporary license to practice podiatric medicine in this state may be issued to a person who meets all the qualifications for licensure with the exception of the residency requirement while participating in a full-time podiatric residency program. This program must be approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association. This person shall practice under the supervision of a licensed and qualified podiatrist of this state. The Arkansas Board of Podiatric Medicine must be notified in writing of this supervisory status by the residency director of the program. The board shall also receive in writing the name of the podiatrist who will act as the supervisor and an agreement to act in the capacity of a supervisor.

(b) The temporary license will be in effect for a period of one (1) year after the date of issue. The board shall not issue a certificate to practice podiatric medicine if the applicant does not present proof of the successful completion of the residency program.

(c) A podiatrist practicing podiatric medicine with a temporary license may be suspended or may have the temporary license revoked under the same provisions for the revocation of licensure or suspension of a fully licensed podiatrist.

(d) The board shall not issue a certificate to practice podiatric medicine if the applicant does not present proof of the successful completion of the residency program. The proof of residency completion accompanied by the licensing renewal fee must be presented to the board within thirty (30) days of completion of the residency program or the applicant shall be required to submit a new application for licensure.

History. Acts 1923, No. 610, § 4; 1937, No. 187, § 1; Pope's Dig., §§ 10848, 12113; Acts 1973, No. 31, § 2; 1983, No. 429, § 4; A.S.A. 1947, § 72-304; Acts 1997, No. 966, § 10.

Publisher's Notes. As to inapplicability of 1973 amendment to certain physicians and surgeons, see Publisher's Notes to § 17-96-301.

17-96-306. Renewal — Continuing education requirement.

(a)(1) A renewal fee to be established by the Arkansas Board of Podiatric Medicine in an amount not to exceed one hundred dollars (\$100) shall be paid on July 1 each year.

(2)(A) If the fee is not paid within three (3) months, the license may be suspended or revoked.

(B) If the license is revoked, it shall only be reissued upon original application and examination.

(3) A penalty may be established by the board, and it shall not exceed one-half ($\frac{1}{2}$) of the renewal fee for renewal fees not paid before July 15 of each year.

(b)(1) For renewal of a license, each licensee must present to the board a certificate of attendance at seminars or other continuing

professional education courses in the health sciences as approved by the board.

(2) The number of hours of continuing education to be earned annually shall be set by the board.

(3) However, the requirement of continuing education may be waived by the board upon application by the licensee and proof of extenuating circumstances, as approved by the board.

History. Acts 1923, No. 610, § 6; Pope's Dig., §§ 10850, 12115; Acts 1973, No. 31, §§ 4, 10; 1983, No. 429, §§ 6, 10; A.S.A. 1947, §§ 72-306, 72-313; Acts 1997, No. 966, § 11.

Publisher's Notes. As to inapplicability of 1973 amendment to certain physicians and surgeons, see Publisher's Notes to § 17-96-301.

17-96-307. Recording and display of license.

(a) All licenses shall be recorded in the manner of other medical licenses in the office of the county recorder in which county the licensee practices.

(b) All licenses shall be conspicuously displayed at the office or other place of practice.

History. Acts 1923, No. 610, § 6; Pope's Dig., §§ 10850, 12115; Acts 1973, No. 31, § 4; 1983, No. 429, § 6; A.S.A. 1947, § 72-306.

Publisher's Notes. As to inapplicability of 1973 amendment to certain physicians and surgeons, see Publisher's Notes to § 17-96-301.

17-96-308. Revocation.

(a)(1) The Arkansas Board of Podiatric Medicine, after hearing, may revoke by majority vote any certificate issued by it and cancel or suspend the registration of any podiatrist who has been convicted of violation of § 17-96-103.

(2) The board, after hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., by a majority vote may also revoke the certificate and cancel or suspend the registration of any person of whom the court records of a court of any state or territory within the United States or of the federal courts or the records of any court of jurisdiction in any foreign country show that the person has been found guilty of a criminal offense.

(3) The board, after hearing, by majority vote may also revoke the certificate and cancel or suspend the registration of any person whose registration was granted upon mistake of material fact.

(b) The board may subsequently, but not earlier than one (1) year thereafter, by unanimous vote, reissue any certificate and register anew any podiatrist whose certificate was revoked and whose registration was canceled by the board, except as otherwise provided in this subchapter.

(c)(1) The board, after hearing, may refuse to issue a certificate and cancel or suspend the registration of any person registered under the provisions of this chapter who, after investigation and hearing, shall be

found guilty of grossly unprofessional and dishonest conduct. The board may impose a penalty not to exceed one thousand dollars (\$1,000) for each violation, require completion of appropriate educational programs or courses, place conditions or restrictions upon the licensee's license or practice, or such other requirements or penalties as may be appropriate to the circumstances of the case and which would achieve the desired disciplinary purposes, but which would not impair the public welfare and morals.

(2) "Unprofessional and dishonest conduct" means, but is not limited to:

- (A) The willful betrayal of a professional secret;
- (B) Having professional connections with, or lending the use of one's name to, an unregistered podiatrist or having professional connection with anyone who has been convicted in any court of any criminal offense whatsoever;
- (C) Being guilty of an offense involving moral turpitude;
- (D) Habitual intemperance;
- (E) Being habitually addicted to the use of morphine, opium, cocaine, or other drugs for other use than legal and legitimate purposes;
- (F) Advertising in a false, fraudulent, deceptive, or misleading manner;
- (G) Becoming physically or mentally incompetent to practice podiatric medicine as to endanger the public; or
- (H) Gross negligence or malpractice.

History. Acts 1923, No. 610, § 7; 1937, No. 187, § 3; Pope's Dig., §§ 10851, 12116; Acts 1973, No. 31, § 5; 1983, No. 429, § 7; A.S.A. 1947, § 72-307; Acts 1997, No. 966, § 12.

Publisher's Notes. As to inapplicability of 1973 amendment to certain physicians and surgeons, see Publisher's Notes to § 17-96-301.

RESEARCH REFERENCES

Ark. L. Rev. Administrative License Revocation in Arkansas, 14 Ark. L. Rev. 139.

CHAPTER 97

PSYCHOLOGISTS AND PSYCHOLOGICAL EXAMINERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS PSYCHOLOGY BOARD.
3. LICENSING.
4. REGULATION OF NEUROPSYCHOLOGY TECHNICIANS.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-96-101 et seq.

RESEARCH REFERENCES

ALR. Liability of doctor, psychiatrist, or psychologist for failure to take steps to prevent patient's suicide. 17 A.L.R.4th 1128.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Improper or immoral sexually related conduct toward patient as grounds for disciplinary action against physician, dentist or other licensed healer. 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician or other medical practitioner. 70 A.L.R.4th 132.

Nonconsensual treatment of involun-

tarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty. 74 A.L.R.4th 1099.

Medical malpractice: Who are "health care providers," or the like, whose actions and damages for medical malpractice. 12 A.L.R.5th 1.

False or fraudulent statements or non-disclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner. 32 A.L.R.5th 57.

Allowance of punitive damages in medical malpractice actions. 35 A.L.R.5th 145.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., § 11 and § 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

CASE NOTES

Expert Witness.

Nothing in this chapter says that an unsupervised psychological examiner is qualified to testify as to his own opinion on

mental illness or insanity. *Robinson v. State*, 274 Ark. 312, 624 S.W.2d 435 (1981).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-97-101. Legislative intent.

17-97-102. Definitions — Levels of practice of psychology.

SECTION.

17-97-103. Exceptions generally.

17-97-104. [Repealed.]

17-97-105. Privileged communications.

Effective Dates. Acts 1955, No. 129, § 20: July 1, 1955.

17-97-101. Legislative intent.

It is intended that the provisions of this chapter be in accordance with and consistent with the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and that the practice of psychology as prescribed in this chapter should not infringe on the practice of medicine.

History. Acts 1955, No. 129, § 19;
A.S.A. 1947, § 72-1518.

17-97-102. Definitions — Levels of practice of psychology.

(a)(1) "Practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by a person who holds an advanced graduate degree in psychology and is trained in the application of psychological principles, methods, or procedures for one (1) or more of the following purposes:

(A) Preventing or eliminating symptomatic, maladaptive, or undesired behavior;

(B) Enhancing interpersonal relationships, work and life adjustment, personal effectiveness, and behavioral and mental health; and

(C) Consultation, teaching, and research.

(2) "Practice of psychology" includes, but is not limited to:

(A) Testing and measuring, that consist of the administration and interpretation of tests measuring personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, achievements, motives, personality dynamics, psychoeducational processes, neuropsychological brain functioning, and other psychological attributes of individuals or groups;

(B)(i) Diagnosis and treatment of mental and emotional disorders, that consist of the appropriate diagnosis of mental disorders, behavior disorders, and brain dysfunctions, according to standards of the profession and the ordering or providing of treatments according to need.

(ii) Treatment includes, but is not limited to, providing:

(a) Counseling;

(b) Psychotherapy;

(c) Marital and family therapy;

(d) Group therapy;

(e) Behavior therapy;

(f) Psychoanalysis;

(g) Hypnosis;

(h) Biofeedback;

(i) Other psychological interventions that aim to modify and adjust perceptions, habits, or conduct; and

(j) The psychological aspects of physical illness, pain, injury, or disability; and

(C) Psychological consulting, which consists of:

(i) Interpreting or reporting on scientific theory or research in psychology;

(ii) Rendering expert psychological opinion or clinical psychological opinion;

(iii) Evaluating and engaging in applied psychological research;

(iv) Program or organizational development; and

(v) Administration, supervision, and evaluation of psychological services.

(3)(A) The practice of psychology may be rendered to individuals, families, groups, organizations, institutions, and the public.

(B) The practice of psychology may be rendered whether or not payment is received for services rendered.

(b)(1) Unless the context otherwise requires, two (2) levels of psychological practice are defined for the purpose of this chapter. The levels are to be known and are referred to as “psychological examiner” and “psychologist”.

(2)(A) A person practices as a “psychological examiner” within the meaning of this chapter when he or she holds himself or herself out to be a psychological examiner or renders to individuals or to the public for remuneration any service involving the practice of psychology.

(B) Psychological examiners independently provide services such as interviewing or administering and interpreting tests of mental abilities, aptitudes, interests, and personality characteristics for the purposes of psychological evaluation to assist in the determination of educational or vocational selection, guidance, or placement.

(C) Other than those psychological services listed in subdivision (b)(2)(B) of this section, the psychological examiner provides psychological services only under the supervision of a qualified psychologist.

(D)(i) A psychological examiner licensed before December 31, 1997, shall be granted independent practice except in neuropsychological assessment and projective personality assessment upon the Arkansas Psychology Board receiving a letter requesting independent practice and a revised statement of intent.

(ii) No additional hours of clinical supervision shall be required for a license granted under subdivision (b)(2)(D)(i) of this section.

(E) A psychological examiner licensed after December 31, 1997, shall be privileged to practice independently except in neuropsychological assessment and projective personality assessment, if the person:

(i) Has completed a master’s degree program in psychology;

(ii) Has completed three thousand (3,000) hours of approved clinical supervised training after making application for independent practice; and

(iii) Has filed a revised statement of intent with the board and has provided documentation of having received appropriate training and experience in those areas requested for independent practice.

(F) After December 31, 2013, no new psychological examiner license shall be issued.

(3) A person practices as a “psychologist” within the meaning of this chapter when he or she holds himself or herself out to be a psychologist or renders to individuals or to the public for remuneration any service involving the practice of psychology.

(c) Nothing in this section shall be construed as permitting the practice of psychology to infringe on the practice of medicine as defined by the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1955, No. 129, § 2; A.S.A. 1947, § 72-1502; Acts 1995, No. 955, § 1; 2003, No. 1482, § 1; 2007, No. 505, § 1.

Amendments. The 2007 amendment added (b)(2)(D) through (b)(2)(F).

CASE NOTES

Psychological Examiner.

This section is intended to provide control within the profession and not to exclude psychological examiner's testimony in a child molestation case because the

examiner was not observed by a supervisor while interviewing and testing the child. *Hughes v. State*, 292 Ark. 619, 732 S.W.2d 829 (1987).

17-97-103. Exceptions generally.

(a) Nothing in this chapter prevents:

(1) The teaching of psychology or the conduct of psychological research by licensed or unlicensed psychologists or other licensed or unlicensed professionals under the laws of Arkansas if the teaching or research does not involve the delivery or supervision of direct services to individuals who are themselves, rather than a third party, the intended beneficiaries of the services without regard to the source or extent of payment for services rendered;

(2) The provision of expert testimony by psychologists who are exempted by this chapter;

(3) Members of other professions licensed under the laws of Arkansas from rendering services within the scope of practice as set out in the statutes regulating their professional practices, if they do not represent themselves to be psychologists or psychological examiners;

(4) Recognized members of the clergy from functioning in their ministerial capacities, if they do not represent themselves to be psychologists or psychological examiners or their services to be psychological services; or

(5) Students of psychology, psychological interns, psychological residents, and other persons preparing for the profession of psychology from performing as a part of their training the functions specified in § 17-97-102, but only under qualified supervision.

(b) Persons holding an earned doctoral degree in psychology from an institution of higher education may use the title "Psychologist" in conjunction with the activities permitted in subdivisions (a)(1) and (2) of this section.

History. Acts 1955, No. 129, § 7; A.S.A. 1947, § 72-1507; Acts 2003, No. 1482, § 2.

17-97-104. [Repealed.]

Publisher's Notes. This section, concerning a grandfathering exception for certain employees of state agencies, was

repealed by Acts 2003, No. 1482, § 3. The section was derived from Acts 1979, No. 897, §§ 2-4; A.S.A. 1947, § 72-1507n.

17-97-105. Privileged communications.

For the purpose of this chapter, the confidential relations and communications between a licensed psychologist or a psychological examiner and a client are placed upon the same basis as those provided by law between an attorney and a client. Nothing in this chapter shall be construed to require any such privileged communication to be disclosed.

History. Acts 1955, No. 129, § 16;
A.S.A. 1947, § 72-1516.

RESEARCH REFERENCES

Ark. L. Rev. Privileges, 27 Ark. L. Rev.
200.

CASE NOTES**Guardianship Proceedings.**

The privilege established by this section applies only to communications between the psychologist and his client. The privilege does not render testimony by the psychologist concerning his examination

of the client and his conclusions as to her competency inadmissible in a proceeding for the appointment of a guardian of the client. *Bogan v. Arkansas First Nat'l Bank*, 249 Ark. 840, 462 S.W.2d 203 (1971).

SUBCHAPTER 2 — ARKANSAS PSYCHOLOGY BOARD**SECTION.**

17-97-201. Creation — Members.

17-97-202. Organization and proceedings.

SECTION.

17-97-203. Powers and duties.

17-97-204. Collection and disposition of fees.

Cross References. Board members not to be held personally liable for actions as board members, § 17-80-103.

Effective Dates. Acts 1955, No. 129, § 20: July 1, 1955.

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions com-

ing before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 648, § 8: this section effective Mar. 22, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of the appropriations provided in this act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the regular session, the delay in the effective date of this act beyond July 1, 1983 could work irreparable harm upon

the proper administration and provision of essential governmental programs; and that the implementation of the system of fees and penalties for services authorized in section 7 of this act must be implemented immediately to enable the State Board of Examiners in Psychology to derive funds essential for the operation of said board during the remainder of the current fiscal year and during the fiscal biennium commencing July 1, 1983. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect as follows: the provisions of section 7 of this act shall be in full force and effect from and after the passage and approval of this act, and all other provisions of this act shall be effective from and after July 1, 1983."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is

hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-97-201. Creation — Members.

(a)(1) There is created the Arkansas Psychology Board, which shall consist of nine (9) members who shall be appointed by the Governor for terms of five (5) years.

(2) The Governor shall appoint:

(A) One (1) academic psychologist engaged in the full-time teaching of psychology at the graduate level at an approved institute of higher learning or holding an active faculty appointment in an American Psychological Association-approved pre- or post-doctoral internship program;

(B)(i) Four (4) practicing psychologists engaged in the full-time practice of psychology with at least one (1) psychologist engaged in the full-time, private practice of psychology.

(ii) The Governor shall ensure that the psychologist members reflect a diversity of practice specialties, including, but not limited to, clinical psychology, counseling psychology, health psychology, neuropsychology, and school psychology;

(C) Two (2) psychological examiners engaged in the full-time practice of psychology; and

(D) Two (2) persons who are not actively engaged in or retired from the practice of psychology who shall be voting members-at-large.

(3)(A) The academic psychologist member, the practicing psychologist members, and the psychological examiner members shall be appointed from a list of nominees provided by the Arkansas Psychological Association, the Arkansas Association of Masters in Psychol-

ogy, or from any other list with the signatures of at least twenty (20) licensed psychologists or psychological examiners attached.

(B)(i) Each nomination shall be transmitted to the Governor within twenty (20) days after a vacancy occurs.

(ii) The Governor may disregard the nominees whose names were not transmitted prior to the expiration of the twenty-day period.

(C)(i) Of the two (2) members appointed pursuant to subdivision (a)(2)(D) of this section, one (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly.

(ii) Both shall be appointed from the state at large, subject to confirmation by the Senate.

(iii) The two (2) positions may not be held by the same person.

(iv) Both shall be full voting members but shall not vote on or participate in the administration or grading of examinations of applicants for licensure.

(D)(i) Any public member appointed under subdivision (a)(2)(D) of this section after July 28, 1995, shall be an Arkansas resident and shall have resided in Arkansas for at least five (5) years immediately preceding appointment.

(ii) Furthermore, the person shall never have been a psychologist or psychological examiner, an applicant or former applicant for licensure as a psychologist or psychological examiner, a member of another mental health profession, a member of a household that includes a psychologist or psychological examiner, or otherwise have conflicts of interest or the appearance of conflicts with his or her duties as a board member.

(4)(A) Each psychologist and psychological examiner appointed to the board after July 28, 1995, shall reside within the State of Arkansas, hold a current valid license to practice, and shall have been licensed to practice psychology in Arkansas for at least five (5) years immediately preceding his or her appointment to the board.

(B) At the time of appointment, each such member shall be free of any conflict of interest and the appearance of any conflict with his or her duties as a member of the board.

(C) To the extent possible, psychologist and psychological examiner board members shall be members or fellows of state or national professional organizations, such as the Arkansas Psychological Association, the Arkansas Association of Masters in Psychology, or the American Psychological Association.

(5)(A) The Governor shall fill all vacancies on the board within thirty (30) days after the vacancy occurs. The Arkansas Psychological Association, the Arkansas Association of Psychological Examiners, and other interested licensed psychologists and psychological examiners shall transmit the names of their nominees to the Governor no later than forty (40) days prior to the expiration of board members' terms, and at least thirty (30) days before the expiration of the term of any board member, the Governor shall appoint the person to replace the board member when the term expires.

(B) The Governor may disregard the nominees of any association that fails to transmit the names of the nominees at least forty (40) days prior to the expiration of the term of office.

(C) The Governor shall remove any member from the board if he or she:

- (i) Ceases to be qualified;
- (ii) Fails to attend three (3) successive board meetings without just cause as determined by the board;
- (iii) Is found to be in violation of this chapter;
- (iv) Pleads guilty or nolo contendere to or is found guilty of a felony or an unlawful act involving moral turpitude by a court of competent jurisdiction; or
- (v) Pleads guilty or nolo contendere to or is found guilty of malfeasance, misfeasance, or nonfeasance in relation to his or her board duties by a court of competent jurisdiction.

(b) All vacancies occurring on the board shall be filled by the Governor for the unexpired term and, for the professional members from the list of those qualified, within thirty (30) days after the vacancy occurs.

(c) The term of each member shall expire on December 31 of the year designated, and on or before that date, for the professional members, the association shall make its recommendations to the Governor for a successor appointee. A successor appointee shall be named by the Governor on or before the expiration date of the terms so expiring.

(d) Immediately and before entering upon the duties of office, the members of the board shall take the constitutional oath of office and shall file it in the office of the Governor, who upon receiving the oath of office shall issue to each member a certificate of appointment.

(e) Each member may receive expense reimbursement in accordance with § 25-16-901 et seq. However, that expense shall in no case exceed the fees collected by the board.

History. Acts 1955, No. 129, §§ 1, 4, 5; 1979, No. 939, § 1; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 72-1501, 72-1504, 72-1505; Acts 1995, No. 955, § 2; 1997, No. 250, § 168; 2003, No. 1482, § 4.

members of the Arkansas Board of Examiners in Psychology, other than the representatives of consumers and the elderly and the psychological examiner, are arranged so that one term expires every year.

Publisher's Notes. The terms of the

17-97-202. Organization and proceedings.

(a) The Arkansas Psychology Board shall meet and organize by electing a chair, a secretary, and a treasurer.

(b) The board shall hold at least one (1) regular meeting each year. Called meetings may be held at the discretion of the chair or at the written request of any two (2) members of the board.

(c) A majority of the members of the board shall at all times constitute a quorum.

(d) The board shall adopt a seal which shall be affixed to all certificates issued by the board.

History. Acts 1955, No. 129, §§ 4, 5; A.S.A. 1947, §§ 72-1504, 72-1505; Acts 1995, No. 955, § 3; 2003, No. 1482, § 5.

17-97-203. Powers and duties.

The Arkansas Psychology Board shall:

- (1) Be empowered to hire assistants as necessary to carry on its activities, within the limits of funds available to the board;
- (2) Be empowered to accept grants from foundations or institutions;
- (3) From time to time adopt rules and regulations that comply with national guidelines and standards as it may deem necessary for the performance of its duties;
- (4) Examine and pass upon the qualifications of the applicants for the practice of psychology as provided; and
- (5) Adopt the code of ethics of the American Psychological Association to govern appropriate practices or behavior as referred to in this chapter and file the code with the Secretary of State within thirty (30) days prior to the effective date of the code of ethics.

History. Acts 1955, No. 129, §§ 5, 17; A.S.A. 1947, §§ 72-1505, 72-1517; Acts 2003, No. 1482, § 6.

CASE NOTES

Cited: Johnson v. Arkansas Bd. of Exmrs. in Psychology, 305 Ark. 451, 808 S.W.2d 766 (1991).

17-97-204. Collection and disposition of fees.

- (a) The Arkansas Psychology Board is authorized to establish and collect various fees and penalties for services related to provision of temporary permits, printed materials, handling returned checks, costs incurred in processing delinquent payments, and other reasonable services as may be determined by the board.
- (b) These fees, along with other cash funds made available to the board, shall be used to supplement the board with adequate income to provide for the efficient and necessary operation of the board.
- (c) The fees and penalties shall be limited to the following types with the maximum amounts as indicated:

Type of Service	Maximum Charge
Photocopying, per page	\$ 1.00
Personal name change	10.00
Service charge on returned checks	20.00
Replacement of returned checks	20.00

Type of Service	Maximum Charge
Temporary permit	100.00
Delinquent payment	100.00
Mailing lists/labels	100.00
Verification of licensure	10.00
Delinquent CE penalty	50.00

History. Acts 1983, No. 648, § 7; A.S.A. 1947, § 72-1519; Acts 1993, No. 993, § 1; 2001, No. 1502, § 1; 2003, No. 1482, § 7.

CASE NOTES

Cited: Southwestern Human Servs. Inst., Inc. v. Mitchell, 287 Ark. 59, 696 S.W.2d 722 (1985).

SUBCHAPTER 3 — LICENSING

- SECTION.
- 17-97-301. Legislative intent — License required.
 - 17-97-302. Psychologists — Application — Qualifications.
 - 17-97-303. Psychological examiners — Application — Qualifications.
 - 17-97-304. Examination.
 - 17-97-305. Issuance.
 - 17-97-306. Reciprocity.
 - 17-97-307. Professional titles.
 - 17-97-308. Annual registration — Failure to reregister.

- SECTION.
- 17-97-309. Fees.
 - 17-97-310. Denial, suspension, revocation, fine, letter of reprimand, or additional education — Grounds — Reinstatement.
 - 17-97-311. Denial, suspension, revocation, or other penalty — Proceedings.
 - 17-97-312. Criminal background checks.

Cross References. Continuing education of practitioners, § 17-80-104.

Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1955, No. 129, § 20: July 1, 1955.

Acts 1981, No. 109, § 4: Feb. 19, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Board of Examiners in Psychology is operating under the provisions of Acts 1955, No. 129, that the examination and license fees established in said act are not adequate to defray the necessary cost to the board to acquire and give examinations or to defray necessary expenses of investigation of qualifications of applicants or of facts and circumstances

which may justify refusal to grant a license, or for revocation or suspension of a license, and that the immediate passage of this act is necessary to provide said board with adequate fee income to provide for the efficient and necessary operation of the board. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 1317, § 16: Oct. 1, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Arkansas children and their parents or guardians should be secure in the knowledge that professional persons who have direct con-

tact with children do not have criminal records and are not a potential threat to the safety of their children; and that an increasing number of incidents are occurring where professional persons are abusing children entrusted into their care; and that in some cases these incidents could have been avoided had the persons been subjected to a criminal background check.

It is further found and determined that, in some instances, allegations of employee criminal misconduct involving children are not being investigated. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on October 1, 1997."

17-97-301. Legislative intent — License required.

(a) The General Assembly intends this section to:

(1) Require all psychology service providers to conform to the licensing requirements of this chapter; and

(2) By conforming, protect the public's health and welfare by ensuring competence in the delivery of those services.

(b) If any person shall practice or hold himself or herself out to the public as being engaged in the practice of psychology, such as clinical, consulting, industrial, personnel, or counseling psychology, and shall not then possess in full force and virtue a valid license to practice as psychological examiner or psychologist under the provisions of this chapter, the person shall be guilty of a violation.

(c) Upon conviction, the person shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

History. Acts 1955, No. 129, §§ 6, 7; 2001, No. 1502, § 2; 2005, No. 1262, § 1; A.S.A. 1947, §§ 72-1506, 72-1507; Acts 2005, No. 1994, § 92.

17-97-302. Psychologists — Application — Qualifications.

(a) Any person wishing to obtain the right to practice as a psychologist in this state who has not heretofore been licensed to do so shall make application to the Arkansas Psychology Board through the Chair of the Arkansas Psychology Board in a form and in a manner as shall be adopted and prescribed by the board and obtain from the board a license to do so.

(b)(1) A candidate for a license shall furnish the board with satisfactory evidence that he or she:

(A) Is of good moral character;

(B) Has received a doctoral degree in psychology from an accredited institution recognized by the board as maintaining satisfactory standards at the time the degree was granted or, in lieu of a degree, a doctoral degree in a closely allied field if it is the opinion of the board that the training required therefor is substantially similar;

(C) Has had at least two (2) years of experience in psychology of a type considered by the board to be qualifying in nature with at least one (1) of those years being postdoctoral work;

(D) Is competent in psychology, as shown by passing examinations, written or oral, or both, as the board deems necessary;

(E) Is not considered by the board to be engaged in unethical practice;

(F) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in § 17-97-312(f); and

(G) Has not failed an examination given by the board within the preceding six (6) months.

(2) At its discretion, the board may accept satisfactory substitute training and experience in lieu of that prescribed in subdivision (b)(1) of this section.

(c) Notwithstanding requirements for licensure as outlined in this chapter, the board shall issue a senior psychologist license to an applicant who has:

(1) At least twenty (20) years of licensure to practice psychology in a state of the United States or in Canada if that license was based on a doctoral degree;

(2) Received no disciplinary sanction during the entire period of licensure;

(3) Passed the Arkansas complementary examination; and

(4) Tendered the appropriate application and fees as required under this chapter or the rules and regulations of the board.

History. Acts 1955, No. 129, § 6; A.S.A. § 24; 1997, No. 995, § 1; 1997, No. 1317, 1947, § 72-1506; Acts 1993, No. 1219, § 9; 2003, No. 1482, §§ 8, 9.

17-97-303. Psychological examiners — Application — Qualifications.

(a) Any person wishing to obtain the right to practice as a psychological examiner who has not heretofore been licensed to do so shall make application to the Arkansas Psychology Board through the Chair of the Arkansas Psychology Board upon a form and in the manner as shall be adopted and prescribed by the board and shall obtain from the board a license to do so.

(b)(1) A candidate for a license shall furnish the board with satisfactory evidence that he or she:

(A) Is of good moral character;

(B) Has a master's degree in psychology or a closely related field from an accredited educational institution recognized by the board as maintaining satisfactory standards;

(C) Is competent as a psychological examiner as shown by passing examinations, written or oral, or both, as the board deems necessary;

(D) Is not considered by the board to be engaged in unethical practice;

(E) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in § 17-97-312(f); and

(F) Has not failed an examination given by the board within the preceding six (6) months.

(2) At its discretion, the board may accept satisfactory substitute training and experience in lieu of that prescribed in subdivision (b)(1) of this section.

(c) The board shall apply through its rules and regulations the qualifications of supervising psychologists and the restrictions and reporting requirements of supervision so as to implement the intent of this chapter without restricting the professional integrity of the psychological examiner and psychologist or the ultimate responsibility of the supervising psychologist.

(d)(1)(A) A psychological examiner licensed before December 31, 1997, shall be granted independent practice except in neuropsychological assessment and projective personality assessment upon the board receiving a letter requesting independent practice and a revised statement of intent.

(B) No additional hours of clinical supervision shall be required for a license granted under subdivision (d)(1)(A) of this section.

(2) A psychological examiner licensed after December 31, 1997, shall be privileged to practice independently except in neuropsychological assessment and projective personality assessment, if the person:

(A) Has completed a master's degree program in psychology;

(B) Has completed three thousand (3,000) hours of approved clinical supervised training after making application for independent practice; and

(C) Has filed a revised statement of intent with the board and has provided documentation of having received appropriate training and experience in those areas requested for independent practice.

(3) After December 31, 2013, no new psychological examiner license shall be issued.

History. Acts 1955, No. 129, § 6; A.S.A. 1947, § 72-1506; Acts 1993, No. 1219, § 25; 1997, No. 1317, § 10; 2001, No. 1502, § 3; 2003, No. 1482, § 10; 2007, No. 505, § 2.

Amendments. The 2007 amendment added (d).

17-97-304. Examination.

(a)(1) Examination of applicants for a license to practice as a psychologist or as a psychological examiner shall be made by the Arkansas Psychology Board at least one (1) time a year according to methods and in such subject fields as may be deemed by the board to be the most practical and expeditious to test the applicant's qualifications.

(2) The examinations shall include the basic psychological sciences.

(b)(1) The board shall require the examinations to be written or oral, or both. In any written examination, the applicant shall be designated by a number instead of his or her name so that his or her identity shall not be disclosed to the members of the board until the examination papers have been graded.

(2) The board shall grade the written examinations returned by the candidate and shall keep them for at least one (1) year.

(c) A candidate shall be held to have passed the examination upon the affirmative vote of three (3) or more members of the board.

(d) Upon written request to the board, any unsuccessful candidate may see his or her graded paper.

History. Acts 1955, No. 129, § 8; A.S.A. 1947, § 72-1508; Acts 2003, No. 1482, § 11.

17-97-305. Issuance.

(a) **LICENSE TO PRACTICE PSYCHOLOGY.** The Arkansas Psychology Board shall be the sole agency empowered to examine candidates concerning competence in the practice of psychology and to grant license for the practice of psychology at the appropriate level. The license shall be signed by the Chair of the Arkansas Psychology Board and attested by the Secretary of the Arkansas Psychology Board under the seal of the board, whereupon a proper license shall be issued in accordance with this chapter.

(b) **PROVISIONAL LICENSE.**

(1) The board shall issue a provisional license to an applicant who has:

(A) Passed the examinations prescribed by the board;

(B) Satisfied the preliminary requirements of §§ 17-97-302 and 17-97-303; and

(C) Paid the fee for a provisional license.

(2) A provisional license holder is entitled to practice psychology under the supervision of a psychologist to meet the requirements for issuance of a license under this section.

(3) The board shall adopt rules that apply to provisional license holders identifying:

(A) The activities that holders may engage in; and

(B) Services that may be provided by holders.

(4) The board may refuse to renew the provisional license of a person who does not meet the requirements prescribed by § 17-97-303.

(c) **PROVISIONAL LICENSE APPLICATION.**

(1) An applicant for examination for a provisional license shall:

(A) Apply on forms prescribed by the board; and

(B) Submit the required fees with the application.

(2) The board may require that the applicant verify the application.

(d) **PROVISIONAL LICENSE EXAMINATION QUALIFICATIONS.**

(1) An applicant may take an examination for a provisional license if the applicant:

(A) Has received:

(i) A doctoral degree in psychology from a regionally accredited educational institution; or

(ii) A doctoral degree in psychology or the substantial equivalent of a doctoral degree in psychology in both subject matter and extent of training from a regionally accredited educational institution;

(B) Has attained the age of majority;

(C) Has good moral character;

(D) Is physically and mentally competent to provide psychological services with reasonable skill and safety, as determined by the board;

(E) Is not afflicted with a mental or physical disease or condition that would impair the applicant's competency to provide psychological services;

(F) Has not been convicted of a crime involving moral turpitude or a felony;

(G) Does not use drugs or alcohol to an extent that affects the applicant's professional competency;

(H) Has not engaged in fraud or deceit in making the application; and

(I) Has not:

(i) Aided or abetted the practice of psychology by a person not licensed under this chapter in representing that the person is licensed under this chapter;

(ii) Represented that the applicant is licensed under this chapter to practice psychology when the applicant is not licensed; or

(iii) Practiced psychology in this state without a license under this chapter or without being exempt under this chapter.

(2) In determining under § 17-97-302(b)(1)(B) whether a degree is substantially equivalent to a doctoral degree in psychology, the board shall consider whether at the time the degree was conferred the doctoral program met the prevailing standards for training in the area of psychology, including standards for training the clinical, school, and industrial counseling.

History. Acts 1955, No. 129, § 13; A.S.A. 1947, § 72-1513; Acts 2001, No. 1502, § 4; 2003, No. 1482, § 12.

17-97-306. Reciprocity.

At its discretion, the Arkansas Psychology Board may grant a certificate without an assembled examination to any person residing or employed in the state who:

(1) At the time of application is licensed or certified by a similar board of another state whose standards, in the opinion of the board, are not lower than those required by this chapter or who has been practicing psychology in another state and has qualifications not lower than those required by this chapter; and

(2) Is able to satisfy the board that to grant him or her a license would be in the public interest.

History. Acts 1955, No. 129, § 9; A.S.A. 1947, § 72-1509; Acts 2003, No. 1482, § 13.

17-97-307. Professional titles.

(a) Except as otherwise provided herein, it is specifically prohibited that any individual or organization, other than those licensed pursuant to this chapter, shall present himself or herself or be presented to the public by any title incorporating the name “psychological”, “psychologist”, or “psychology”.

(b)(1) Any psychological scientist employed by a recognized research laboratory, college, or university may represent himself or herself by the academic or research title conferred upon him or her by the administration of the laboratory, college, or university. Nothing in this section shall be construed as permitting those persons to offer their service to any other persons or organizations as consultants or to accept remuneration for any psychological services other than that of their institutional salaries unless they have been licensed under this chapter.

(2) Visiting lecturers from recognized laboratories, colleges, or universities are exempt from the provisions of this section and may utilize their academic or research titles when presenting lectures to similar institutions or organizations.

(3) Students of psychology, psychological interns, and other persons preparing for the profession of psychological examiner or psychologist under qualified supervision in recognized training institutions or facilities may be designated by such titles as “psychological intern”, “psychological trainee”, or other titles clearly indicating such training status.

(4)(A) Individuals who have been certified as school psychology specialists by the Department of Education shall be permitted to use the title “school psychology specialist”.

(B) Those persons shall be restricted in their practice to employment within those settings under the purview of the State Board of Education.

History. Acts 1955, No. 129, § 3; A.S.A. 1947, § 72-1503; Acts 1995, No. 279, § 1.

17-97-308. Annual registration — Failure to reregister.

(a) The Arkansas Psychology Board may adopt and enforce rules and regulations requiring every person having a license to practice to pay an annual registration fee in a sum to be fixed by the board.

(b) The fee shall become due on a date fixed by the board.

(c) Failure to pay the annual registration fee within the time stated shall automatically suspend the right of any licentiate to practice his or her profession while delinquent.

(d) An application for annual renewal of the license of a psychologist or psychological examiner will not be considered if the applicant has not

supplied forty (40) hours of continuing education for the previous biennium, i.e., twenty-four (24) months.

(e)(1) All programs of continuing education for licensed psychologists or psychological examiners shall be subject to the approval of the board.

(2) The board is authorized to prescribe by regulations the:

(A) Minimum standards and requirements for continuing education programs for licensees;

(B) Procedures and policies for administering continuing education programs; and

(C) Manner and conditions under which credit will be granted for participation in continuing education programs.

(f)(1) If any licentiate fails for three (3) consecutive years to pay the fee, then it shall be the duty of the board, without hearing or notice, to cancel his or her license subject to reinstatement.

(2) If application for reinstatement is made, the board shall consider the moral character and professional qualifications of the applicant as in the case of an original application.

History. Acts 1955, No. 129, § 15;
A.S.A. 1947, § 72-1515; Acts 2001, No.
1502, § 5; 2003, No. 1482, § 14.

17-97-309. Fees.

(a)(1) There shall be paid to the Chair of the Arkansas Psychology Board by each applicant for a permanent license an application fee of two hundred dollars (\$200).

(2) An additional fee to be determined by the Arkansas Psychology Board, but in no event to exceed the sum of one hundred dollars (\$100), shall be paid as deemed necessary to defray the cost of acquiring and administering the examination test and related expenses in connection therewith.

(b) An additional sum of two hundred dollars (\$200) shall be paid when the initial license is issued.

(c) Each licensee shall pay the board an annual fee in an amount as may be determined by the board, but not to exceed three hundred dollars (\$300) for renewal of a license.

(d) No part of any fee shall be returnable under any circumstances other than failure of the board to hold examinations at the time originally announced, whereupon the entire fee may be returned at the option of the candidate.

History. Acts 1955, No. 129, § 12; 1512; Acts 1993, No. 993, § 2; 2003, No. 1981, No. 109, § 1; A.S.A. 1947, § 72- 1482, § 15.

17-97-310. Denial, suspension, revocation, fine, letter of reprimand, or additional education — Grounds — Reinstatement.

(a) The Arkansas Psychology Board may refuse to grant a certificate

or may suspend or revoke any license for a period to be determined by the board, may impose a fine of up to five thousand dollars (\$5,000), may issue a letter of reprimand, and may require additional hours of education of a licensee on the following grounds:

(1) The employment of fraud or deception in applying for a license or in passing the examination provided for in this chapter;

(2) The practice of psychology under a false or assumed name or the impersonation of another practitioner of a like or different name;

(3) Habitual intemperance in the use of ardent spirits, narcotics, or stimulants to such an extent as to incapacitate the licensee or applicant for the performance of his or her duties;

(4) Violation of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.;

(5) Practice of a level of psychology inappropriate to the particular license held by the licentiate;

(6) Upon recommendation of the ethics committee of the Arkansas Psychological Association or of the American Psychological Association;

(7) Negligence or wrongful actions in the performance of his or her duties; or

(8) A violation of any rule or regulation of the board or the rules of ethics as adopted by the board.

(b) The board shall refuse to issue or shall revoke the license of any person who has been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in § 17-97-312(f) unless the person requests and the board grants a waiver pursuant to § 17-97-312(h).

(c)(1) Upon satisfactory proof that any applicant or licentiate has been guilty of any of the offenses listed in subsection (a) of this section, the board may refuse to grant a certificate to the applicant or may revoke a license of the licentiate upon a vote of at least three (3) members of the board.

(2) An application for reinstatement may be made to the board, and upon favorable action by three (3) of its members, the board may reinstate the applicant.

History. Acts 1955, No. 129, § 10; A.S.A. 1947, § 72-1510; Acts 1997, No. 1317, § 11; 2001, No. 1502, § 6; 2003, No. 1482, § 16; 2007, No. 827, § 138.

Publisher's Notes. This section may

be affected by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

Amendments. The 2007 amendment substituted "or shall revoke" for "or revoke" in (b).

17-97-311. Denial, suspension, revocation, or other penalty — Proceedings.

(a)(1)(A) The Arkansas Psychology Board may investigate or cause to be investigated any allegation or evidence that appears to show that a person:

(i) Is practicing psychology without a license; or

(ii) Licensed to practice in Arkansas and anyone under his or her supervision is or may be in violation of this chapter or of any of the rules and regulations adopted by the board.

(B) The board shall adopt rules to ensure that:

(i) Any individual selected by the board to conduct an investigation does not have a conflict of interest that would disqualify the individual from being an impartial investigator in the matter being investigated; and

(ii) Any investigation of a respondent in an investigated matter involves the input of an advisor who possesses qualification or experience, or both, substantially comparable to or greater than that of the investigated respondent.

(2) The board may not recommend suspension, revocation, or any other penalty described in § 17-97-310 affecting a certificate or license or refuse to issue or to renew any certificate for any cause listed in this chapter unless the person accused has been given at least twenty (20) days' notice in writing by registered mail, with return receipt demanded, of the charges against the person and an opportunity for a public hearing by the board.

(3) The written notice shall be mailed to the person's last known address, but the nonappearance of the person shall not prevent such a hearing.

(b) At the hearing the board may administer an oath and procure by its subpoenas the attendance of witnesses and the production of relevant books and papers.

(c) Any action of or ruling or order made or entered by the board declining to issue a certificate, declining to recommend licensure, or recommending suspension, revocation, or other penalty described in § 17-97-310 that affects a certificate or license shall be subject to review by the courts of this state in the same manner and subject to the same powers and conditions that are now provided by law in regard to rulings, orders, and findings of other quasi-judicial bodies in Arkansas where not otherwise specifically provided.

History. Acts 1955, No. 129, §§ 11, 14; A.S.A. 1947, §§ 72-1511, 72-1514; Acts 2001, No. 1502, § 7; 2003, No. 1482, § 17.

Publisher's Notes. This section may be affected by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

17-97-312. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas Psychology Board shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward

to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) Except as provided in subdivision (m)(1) of this section, no person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;
- (9) Aggravated robbery as prohibited in § 5-12-103;
- (10) Battery in the first degree as prohibited in § 5-13-201;
- (11) Aggravated assault as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (14) Rape as prohibited in § 5-14-103;
- (15) Sexual indecency with a child as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
- (17) Incest as prohibited in § 5-26-202;
- (18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;
- (21) Permitting abuse of a minor as prohibited in § 5-27-221;
- (22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse as prohibited in § 5-28-103;

- (24) Theft of property as prohibited in § 5-36-103;
- (25) Theft by receiving as prohibited in § 5-36-106;
- (26) Arson as prohibited in § 5-38-301;
- (27) Burglary as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510 as prohibited in § 5-64-401;
- (29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;
- (30) Stalking as prohibited in § 5-71-229;
- (31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;
- (32) Computer child pornography as prohibited in § 5-27-603; and
- (33) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) Except as provided in subdivision (m)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding a letter of provisional licensure has pleaded guilty or nolo contendere to or been found guilty of any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative or the person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the department.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(k) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m)(1) For purposes of this section, an expunged record of a conviction or plea of guilty of or nolo contendere to an offense listed in subsection (f) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (m)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

- (A) Capital murder as prohibited in § 5-10-101;
- (B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (C) Kidnapping as prohibited in § 5-11-102;
- (D) Rape as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;
- (F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-206;
- (G) Incest as prohibited in § 5-26-202;
- (H) Arson as prohibited in § 5-38-301;
- (I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and
- (J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1997, No. 1317, § 12; 2003, No. 1087, § 16; 2003, No. 1385, § 1; 2003, No. 1482, § 18; 2005, No. 1923, § 3.

A.C.R.C. Notes. As originally enacted, Acts 1997, No. 1317, § 12, also provided: “(m)(1) By October 1, 2000, all persons licensed by the board prior to October 1, 1997, shall be required to apply for a criminal history check in the same man-

ner as an applicant for licensure under this section.

“(2) The board shall develop and adopt a regulation that prescribes how criminal history checks for persons licensed prior to October 1, 1997, will be phased in during the period prior to October 1, 2000.”

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Criminal Law, Computer Crimes, 26 U. Ark. Little Rock L. Rev. 361.	Survey of Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Businesses, Background Checks, 26 U. Ark. Little Rock L. Rev. 456.
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SUBCHAPTER 4 — REGULATION OF NEUROPSYCHOLOGY TECHNICIANS

SECTION.	SECTION.
17-97-401. Technicians employed by psychologists — Supervision.	17-97-402. Additional training.
	17-97-403. Registration.

SECTION.

17-97-404. Disclosure.

17-97-405. Supervision of technicians —
Supervised experience.

SECTION.

17-97-406. Qualifications of supervisors.

17-97-401. Technicians employed by psychologists — Supervision.

(a)(1) A technician may be employed by a licensed psychologist in the practice of neuropsychology.

(2)(A) An individual employed as a technician may be employed only in neuropsychological testing and shall be restricted to the administration and scoring of standardized objective tests.

(B) An individual employed as a technician may not administer or score projective tests.

(b)(1) A technician shall have a bachelor's degree from a regionally accredited institution, preferably with a major in psychology.

(2) The basic educational background of a technician shall include passing grades from instruction in:

(A) Abnormal psychology;

(B) Personality;

(C) Psychological statistics; and

(D) Psychological testing.

(3) As used in this subsection, "passing grade" means:

(A) "C" in a letter grading system;

(B) "Pass" in a pass/fail system; or

(C) "Satisfactory" in a satisfactory/unsatisfactory grading system.

(4) A technician who has completed a degree with a nonpsychology major shall have completed course work with passing grades in the subject matter areas listed in subdivision (b)(2) of this section.

(5)(A) A technician who does not have this academic background and is currently employed by a psychologist shall be provided with specific information to supplement his or her training in neuropsychological test administration.

(B) Any technician employed by a psychologist in the future shall be required to meet the academic background specified in this section.

(c) In addition to formal university or college-based preparation, a technician shall demonstrate training and instruction in the numerous areas that pertain to his or her role as a technician as established by the Arkansas Psychology Board.

(d) It is the intent of this section that:

(1) Every effort shall be made to employ only those applicants with degrees in psychology; and

(2) For those employees who do not possess a degree in psychology, the technician, before engaging in service delivery, shall have successfully completed the requirements of this section by obtaining formal university or college course work in the courses delineated in this section.

History. Acts 2005, No. 1262, § 2; substituted “the subject matter areas
2007, No. 827, § 139. listed in subdivision (b)(2) of this section”
Amendments. The 2007 amendment for “these areas” in (b)(4).

17-97-402. Additional training.

- (a) The supervising psychologist shall make the technician aware:
 - (1) Of the goals of neuropsychological examination and his or her specific role in achieving those goals;
 - (2) Through additional training, if necessary, of appropriate institutional emergency procedures to deal with various medical emergencies such as heart attack, respiratory arrest, and seizures and of other relevant information; and
 - (3) In addition to medical emergencies, of recommended procedures for dealing with incompetent or adjudicated patients who attempt to leave the testing setting without authorization.
- (b) The supervising psychologist shall:
 - (1) Train a technician to be sensitive to subtle or overt suicidal or homicidal threats or innuendoes made during testing; and
 - (2) Because the technician may be exposed to aggressive or sexually inappropriate behavior on the part of patients, provide the technician with specific instructions on how to handle such situations.
- (c)(1) Registered technicians shall complete a one-hour ethics course each year.
- (2) The course shall be documented as part of the annual statement of supervision filed by the supervising psychologist.
- (d)(1) A technician shall receive training in:
 - (A) Ethical issues; and
 - (B) Methods of dealing with situations that arise in the context of assessment.
- (2) A technician shall receive specific instruction in regard to:
 - (A) The limits of his or her role; and
 - (B) Relationships with:
 - (i) The supervising psychologist; and
 - (ii) Other technicians.
- (3)(A) The supervising psychologist shall provide explicit guidance regarding ethical issues that pertain to the activities of a technician in neuropsychological examination.
 - (B) These issues include:
 - (i) Protection of patient confidentiality;
 - (ii) Protection of the confidentiality of test information regarding patients;
 - (iii) Maintenance and protection of test security; and
 - (iv) Constraints regarding dual relationships with patients or supervisors.
- (e) A technician should be explicitly instructed not to present himself or herself to patients in a manner that implies any independent professional prerogatives.
- (f) The supervising psychologist shall:

(1) Correct any misperceptions a technician may have about the potential for growth in the roles and responsibilities of technicians;

(2) Specifically state that test selection, interpretation, and communication of results are professional activities performed only by the supervising psychologist; and

(3) Stipulate that these roles are not and never will be within the scope of employment of the technician.

(g)(1) The supervising psychologist shall ensure that each technician employed by the psychologist has an explicit understanding of the limited nature of the technician's role in neuropsychological examination.

(2) The supervising psychologist shall clearly delineate the lines of authority between himself or herself and the technician.

(3)(A) A technician shall be made aware at the time of his or her employment that the technician's role in the overall process is important, but nonetheless is narrowly constrained.

(B) The role of the technician is strictly limited to the administration and scoring of certain test procedures that shall be selected, interpreted, and communicated by the supervising psychologist.

History. Acts 2005, No. 1262, § 2.

17-97-403. Registration.

(a)(1) Each licensed psychologist employing technicians shall:

(A) Register each technician with the Arkansas Psychology Board; and

(B) Annually submit a statement of supervision outlining the supervisory process used with each technician.

(2) Before employment, the technician shall:

(A) Be registered with the board; and

(B) Have completed a criminal background check as described for licensed psychologists under § 17-97-312.

History. Acts 2005, No. 1262, § 2.

17-97-404. Disclosure.

A licensed psychologist employing a technician or technicians shall provide to clients written disclosure concerning the limited role of technicians to clients and legal guardians of minors and to schools or third-party payors if legal or ethical guidelines require such disclosure.

History. Acts 2005, No. 1262, § 2.

17-97-405. Supervision of technicians — Supervised experience.

(a)(1) An acceptable employment setting for a technician provides ongoing neuropsychological services or scientific research in a well-defined and established program.

(2) Physical components shall be available, including office space, support staff, and equipment necessary for the technician to be successful.

(3) The setting shall meet the broad and specialized needs of the technician that are congruent with his or her job description.

(b)(1) The work setting shall provide the technician with a written document specifying the administrative policies and the roles, goals, and objectives of the technician's position.

(2) At the beginning of employment of a technician, the supervising psychologist shall develop, along with the technician, a written, individualized job description that is consistent with the qualifications of the technician and the requirements of the setting.

(3) The supervising psychologist shall determine the adequacy of the technician's preparation for the tasks to be performed.

(4) The documents required under this subsection shall serve as the foundation for the written evaluation of the technician.

(c) The setting shall include a licensed, board-approved psychologist who is legally and ethically responsible for the oversight of the integrity and quality of the services as well as other resources necessary to meet the employment needs of the technician whose technical assistance is restricted to the practice of neuropsychology and research.

(d)(1) The role of the technician shall be identified in such a way that his or her supervised status is clearly identifiable to clients, third-party payors, and other persons.

(2) Each patient or client shall be informed of the possibility of periodic meetings with the supervising psychologist at the service provider's or the supervising psychologist's request in accordance with guidelines published by the American Psychological Association and the Association of State and Provincial Psychology Boards.

(e)(1) Work assignments shall be commensurate with the skills of the technician.

(2) All procedures shall be planned in consultation with the supervising psychologist.

(f) Public announcement of services and fees and contacts with the lay or professional community shall be offered only by or in the name of the supervising psychologist.

History. Acts 2005, No. 1262, § 2.

17-97-406. Qualifications of supervisors.

(a) A supervising psychologist shall be:

(1) Licensed to practice psychology in Arkansas;

(2) Aware of and abide by the ethical principles and state statutes pertaining to the practice of psychology in general and to supervision in particular; and

(3) Approved by the Arkansas Psychology Board to practice neuropsychology.

(b) A supervising psychologist shall have:

(1) At least three (3) years of post-licensure experience; and

(2) Had training or experience, or both, in supervision.

(c) A supervising psychologist is ethically and legally responsible for all of the professional activities of the technician.

(d)(1) A supervising psychologist shall have adequate training, knowledge, and skill to render competently any neuropsychological service which the employed technician undertakes.

(2)(A) A supervising psychologist may not permit a technician to engage in any practice that the supervising psychologist cannot perform competently himself or herself.

(B) The supervising psychologist shall interrupt or terminate the technician's activities whenever necessary to ensure adequate development of skills and the protection of the public.

(3)(A) Any written documents prepared by the technician shall include the credentials and signature of both the technician and the supervising psychologist.

(B) The name and credentials of a technician employed in the testing procedures shall be included on written reports prepared by the psychologist.

(e) A supervising psychologist or a qualified designee who meets the requirements of a supervisor shall provide twenty-four-hour availability to the technician and the technician's clients for emergency consultation and intervention.

(f)(1) A supervising psychologist shall have sufficient knowledge of all clients, including face-to-face contact when necessary, in order to plan effective delivery procedures.

(2) A supervising psychologist shall provide for another qualified supervisor in case of any interruption of supervision due to such factors as the supervisor's illness, unavailability, or relocation.

(g) A supervising psychologist:

(1) Shall avoid entering into a dual relationship with a technician for whom the psychologist provides supervision;

(2) May not exploit or engage in a sexual relationship with a technician he or she employs; and

(3) Shall attempt to resolve any unforeseen interference that may be potentially harmful to the supervisory relationship with due regard for the best interests of both the client and the technician and after appropriate consultation.

(h)(1) No supervising psychologist may supervise more than three (3) technicians during any one (1) employment period.

(2) For a supervising psychologist who employs part-time technicians, "three (3) technicians" means any combination of employees that totals three (3) full-time equivalents but no more than eight (8) part-time technicians during any one (1) employment period.

CHAPTER 98

REGISTRATION OF DISEASE INTERVENTION SPECIALISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE BOARD OF DISEASE INTERVENTION SPECIALISTS.
3. EXAMINATION AND REGISTRATION.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-101-101 et seq.

Effective Dates. Acts 1993, No. 107, § 21: Feb. 11, 1993. Emergency clause provided: "It has been found and determined by the General Assembly of Arkansas that there is presently no agency in this state authorized to register disease intervention specialists, that there are no established qualifications for registered disease intervention specialists in this state, and that a system for registration

and qualification of registered disease intervention specialists is desirable as soon as possible to protect the dignity of that profession and to protect the public from the practice of such profession by persons who are inexperienced and unqualified to practice disease intervention. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-98-101. Purpose.
- 17-98-102. Restriction of registry.
- 17-98-103. Definitions.
- 17-98-104. Exemptions.
- 17-98-105. Unlawful practice — Penalties.

SECTION.

- 17-98-106. Disclosure of information.
- 17-98-107. Disposition of fees or payments.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-98-101. Purpose.

Since the profession of disease intervention specialist significantly affects the lives of the people of this state, it is the purpose of this chapter to protect the public by setting standards of qualification, training, and experience for those who seek to represent themselves to the public as disease intervention specialists and by promoting high standards of professional performance for those engaged in the practice of disease intervention.

History. Acts 1993, No. 107, § 1.

17-98-102. Restriction of registry.

It is the intent of the General Assembly to restrict registry to those individuals who are qualified under this chapter to be disease intervention specialists. It is not the intent of the General Assembly to register persons, such as state employees, in the job classification of disease intervention specialist.

History. Acts 1993, No. 107, § 3.

17-98-103. Definitions.

As used in this chapter:

(1) "Associate disease intervention specialist" means a person who meets the educational and specialized training requirements of this chapter, but does not meet the experience requirements established for a registered disease intervention specialist;

(2) "Board" means the State Board of Disease Intervention Specialists created by this chapter;

(3) "Continuing education unit" means value given for participation in organized continuing education experience under reasonable sponsorship, capable direction, and qualified instruction approved by the board;

(4) "Disease intervention" means activities used to prevent disease transmission by ensuring that those people who have a sexually transmitted disease and those who have been exposed to a sexually transmitted disease are promptly located, examined, and adequately treated before any signs or symptoms of a disease appear or before any laboratory evidence of a disease is demonstrable or before an infected person would have sought treatment voluntarily;

(5) "Disease intervention specialist-in-training" means a person who meets the educational requirements of this chapter, but does not meet the specialized training requirements established for an associate disease intervention specialist; and

(6) "Registered disease intervention specialist" means a trained health care professional meeting the educational, specialized training, and experience requirements of this chapter who practices sexually transmitted disease intervention with patients, sex partners, and others suspected of having a sexually transmitted disease.

History. Acts 1993, No. 107, § 2.

17-98-104. Exemptions.

(a) Nothing in this chapter shall be construed to limit members of the clergy, Christian Science practitioners, and licensed health care professionals, such as physicians, nurses, psychologists, and counselors, from doing work within the standards and ethics of their respective professions, provided that they do not hold themselves out to the public by any title or description of services as a disease intervention specialist.

(b) Nothing in this chapter shall be construed to limit the employment by healthcare facilities of persons who commonly perform services within the definition of disease intervention, so long as the services are performed within the course of and scope of their employment as employees of healthcare facilities and they do not hold themselves out to the public by any title or description of services as disease intervention specialists. This chapter does not require an employee of a healthcare facility to be registered as disease intervention specialists as a condition of employment.

(c) Nothing in this chapter shall be construed as limiting the activities of a student or other person preparing for the profession of disease intervention specialist, provided that disease intervention is performed only under qualified supervision.

History. Acts 1993, No. 107, § 3.

17-98-105. Unlawful practice — Penalties.

(a) If any person shall practice or hold himself or herself out to the public as being engaged in the practice of disease intervention and is not then currently registered to practice as a disease intervention specialist, he or she shall be deemed guilty of a misdemeanor.

(b) Upon conviction, he or she shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200) or by imprisonment not exceeding three (3) months, or by both fine and imprisonment.

(c) Each day the violation continues constitutes a separate offense.

(d) The State Board of Disease Intervention Specialists shall assist the prosecuting attorney in the enforcement of this chapter, and any member of the board may present evidence of a violation to the appropriate prosecuting attorney.

History. Acts 1993, No. 107, § 4.

17-98-106. Disclosure of information.

No registered disease intervention specialist or certified disease intervention specialist, disease intervention specialist-in-training, or his or her secretary, stenographer, or clerk, may disclose any information he or she may have acquired from persons consulting him or her in

his or her professional capacity to any person except with the written consent of the person or persons whose history is to be disclosed.

History. Acts 1993, No. 107, § 5.

17-98-107. Disposition of fees or payments.

(a) All fees or payments collected by the State Board of Disease Intervention Specialists under this chapter shall be deposited into a bank designated by the board, and the board shall make a report annually to the Governor showing all receipts and disbursements of moneys and a summary of all business transacted during the year.

(b) Expense reimbursement for the board in accordance with § 25-16-901 et seq. and other expenses provided hereunder shall be paid by the board from the fees collected by it.

History. Acts 1993, No. 107, § 17;
1997, No. 250, § 169.

SUBCHAPTER 2 — STATE BOARD OF DISEASE INTERVENTION SPECIALISTS

SECTION.

17-98-201. Creation.

17-98-202. Meetings — Election of officers.

SECTION.

17-98-203. Rules and regulations.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-98-201. Creation.

(a) There is created the State Board of Disease Intervention Specialists, which shall consist of seven (7) members who shall be appointed by the Governor from a list of twelve (12) candidates submitted by the employees of the Division of AIDS and Sexually Transmitted Diseases of the Department of Health.

(b)(1) Members shall be appointed for seven-year terms, except for a person who is appointed to fill out the unexpired term of another member.

(2) The term of office shall expire on January 1 of each year.

(3)(A) Each year, three (3) candidates shall be submitted by registered disease intervention specialists to the Governor, who shall appoint one (1) to fill the expired term.

(B) The term of office shall be fixed so that one (1) member of the board will be retired each year, and each year three (3) candidates shall be submitted by registered disease intervention specialists to the Governor, who shall appoint one (1) to fill the expired term.

(c)(1) The appointees shall be registered disease intervention specialists who have been residents in the State of Arkansas for at least one (1) year, have had experience in the field of disease intervention for at least five (5) years, and are presently engaged in the field of disease intervention.

(2) The board members must hold a current certificate of registration issued by the board.

(d)(1) The Governor shall fill any vacancy caused by death, resignation, or removal for the unexpired term.

(2) Vacancies for unexpired terms shall be filled from three (3) candidates submitted within thirty (30) days by registered disease intervention specialists.

(3) If no candidate is submitted within thirty (30) days, the Governor shall fill the vacancy with any eligible disease intervention specialist.

(e) The Governor may remove any member of the board for misconduct, incapacity, or neglect of duty.

(f) The members of the board shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq. However, the expenses shall in no case exceed funds available to the board.

History. Acts 1993, No. 107, § 6; 1997, No. 250, § 170.

A.C.R.C. Notes. As enacted by Acts 1993, No. 107, § 6, former subdivision (b)(4) began: "Except for the initial board members."

As enacted by Acts 1993, No. 107, § 6, subsection (c) ended: "except that the initial members shall issue to themselves a certificate of registration without applica-

tion or examination."

Publisher's Notes. Acts 1993, No. 107, § 6, provided, in part, that the term of the first board members shall be fixed so that one (1) member will be appointed for one (1) year, one for two (2) years, one for three (3) years, one for four (4) years, one for five (5) years, one for six (6) years, and one for seven (7) years.

17-98-202. Meetings — Election of officers.

(a) The State Board of Disease Intervention Specialists shall hold a meeting at least one (1) time a year and at such times as the Chair of the State Board of Disease Intervention Specialists shall appoint.

(b) Annually, the board shall elect from its members a chair and a secretary.

(c) Four (4) members shall constitute a quorum, but no action may be taken on any questions unless at least four (4) members are in accord.

(d) The board shall adopt an official seal which shall be affixed to all certificates of registration.

History. Acts 1993, No. 107, § 7.

“At the first meeting and annually thereafter.”

A.C.R.C. Notes. As enacted by Acts 1993, No. 107, § 7, subsection (b) began:

17-98-203. Rules and regulations.

(a) The State Board of Disease Intervention Specialists shall adopt such rules and regulations as are reasonably necessary to administer this chapter.

(b) The Chair and the Secretary of the State Board of Disease Intervention Specialists may administer oaths and subpoena witnesses.

(c) The board, if moneys are appropriated therefor, may employ and fix the compensation of such assistants, clerks, stenographers, typists, and other employees to serve at the pleasure of the board, and acquire such office space, furniture, supplies, equipment, and other such proper conveniences as may be reasonably necessary for the performance of their duties under this chapter.

(d)(1) The board shall promulgate rules and regulations establishing standards for continuing education as a means to maintain professional competency.

(2) The standards shall be established in a manner to assure that a variety of approved continuing education programs are available to registered disease intervention specialists, including, but not limited to, academic studies, in-service education, institutes, seminars, lectures, conferences, workshops, extension courses, home study programs, articles published, and scientific papers published.

(3) The continuing education units shall be awarded for direct participation in courses approved by the board.

(e) The board may contract with another agency or association to perform part or all of the duties in establishing procedures to record and retain data on all registered disease intervention specialists in good standing.

History. Acts 1993, No. 107, § 8.

SUBCHAPTER 3 — EXAMINATION AND REGISTRATION

SECTION.

17-98-301. Examinations.

17-98-302. Admission to examination.

17-98-303. Issuance of certificate without examination.

17-98-304. Expiration and renewal.

SECTION.

17-98-305. Application for reinstatement.

17-98-306. Refusal to renew — Suspension or revocation.

17-98-307. Hearing and notice.

17-98-301. Examinations.

(a) The State Board of Disease Intervention Specialists shall hold examinations to test the fitness of applicants for registration at such times and places within this state as the board shall determine. The board shall conduct at least one (1) examination every year. The scope of the examination shall be determined by the board.

(b) Within ninety (90) calendar days after an application is filed with the Secretary of the State Board of Disease Intervention Specialists, the board shall notify the applicant whether his or her application for examination was accepted or rejected and, if rejected, the reason therefor.

(c) The secretary shall give reasonable notice by mail of the time and place of the examination to each applicant accepted for examination.

(d) Within sixty (60) calendar days after the examination, the board shall notify by mail each examinee as to whether he or she has passed the examination.

(e) Each person who passes the examination to the satisfaction of the board shall be issued a certificate of registration upon payment of a registration fee set by the board.

History. Acts 1993, No. 107, § 9.

17-98-302. Admission to examination.

(a) The State Board of Disease Intervention Specialists shall admit to examination any person who makes application to the Secretary of the State Board of Disease Intervention Specialists on forms prescribed and furnished by the board, pays an application fee set by the board to defray the expense of examination, and submits satisfactory proof to the board that he or she:

- (1) Is a person of good moral character;
- (2) Meets the minimum educational requirements;
- (3) Meets the minimum specialized training requirements, as determined by the board;
- (4) Has had two (2) years of field experience in human immunodeficiency virus/sexually transmitted disease intervention; and
- (5) Is actively engaged in the field of human immunodeficiency virus/sexually transmitted disease intervention at the time he or she makes application.

(b) The minimum educational requirements for admission to examination for registration as a disease intervention specialist shall be as follows:

- (1) A bachelor's or master's of public health degree with specialization in disease intervention from a school of public health approved by the board; or
- (2) A bachelor's degree with a minimum of thirty (30) semester hours or its equivalent in biology, chemistry, physics, math, sociology, psychology, or criminal justice, plus two (2) years' experience in disease intervention or training courses approved by the board.

(c) Any person meeting the educational and specialized training requirements of this chapter who does not meet the experience requirements of this chapter may make application to the board, through a process prescribed by the board, for acceptance as an associate disease intervention specialist. The board shall accept such an application when submitted, if accompanied by the required fee.

(d) Any person who meets the educational requirements of this chapter but does not meet the specialized training requirements established for an associate disease intervention specialist may make application to the board, through a process prescribed by the board, for acceptance as a disease intervention specialist-in-training.

History. Acts 1993, No. 107, § 10.

Publisher's Notes. Acts 1993, No. 107, § 11, provided: "The board shall approve for examination any person, who before January 1, 1994, makes application to the secretary of the board on forms prescribed and furnished by the board, pays a registration fee set by the board and submits proof satisfactory to the board that he:

"(1) Is a person of good moral character;

"(2) Has had twelve (12) months of field experience in HIV/Sexually Transmitted Disease intervention in this state prior to January 1, 1992;

"(3) Is actively engaged in the field of HIV/Sexually Transmitted Disease intervention at the time he makes application."

17-98-303. Issuance of certificate without examination.

The State Board of Disease Intervention Specialists shall issue a certificate of registration without examination to any person who makes application on forms prescribed and furnished by the board, pays a registration fee set by the board, and submits satisfactory proof that he or she:

(1) Is of good moral character;

(2) Has had at least two (2) years' experience in the field of human immunodeficiency virus/sexually transmitted disease intervention; and

(3) Is registered as a disease intervention specialist in a state in which the qualifications for registration are not lower than the qualifications for registration in this state at the time he or she applies for registration.

History. Acts 1993, No. 107, § 12.

17-98-304. Expiration and renewal.

(a) Each certificate of registration issued by the State Board of Disease Intervention Specialists shall expire on June 30 following the date of issue.

(b) A renewal certificate may be issued to the holder of a current certificate of registration who makes application prior to the expiration of his or her certificate and pays a renewal fee set by the board. Satisfactory proof of complying with the board's continuing education requirements must accompany renewal applications.

History. Acts 1993, No. 107, § 13.

A.C.R.C. Notes. As originally enacted by Acts 1993, No. 107, § 13, the second

sentence in subsection (b) began: "provided that, beginning July 1, 1994,".

17-98-305. Application for reinstatement.

A former registered disease intervention specialist whose certificate has expired or has been suspended or revoked may make application for reinstatement by paying a renewal fee and submitting satisfactory proof to the State Board of Disease Intervention Specialists that he or she has complied with the continuing education requirements. The board shall consider the moral character and professional qualifications of the applicant as in the case of an original application.

History. Acts 1993, No. 107, § 14.

17-98-306. Refusal to renew — Suspension or revocation.

The State Board of Disease Intervention Specialists may refuse to renew or may suspend or revoke a certificate upon proof that the applicant:

- (1) Is not of good character; or
- (2) Is guilty of fraud, deceit, gross negligence, incompetency, or misconduct relative to his or her duties as a disease intervention specialist.

History. Acts 1993, No. 107, § 15.

17-98-307. Hearing and notice.

(a)(1) Before the State Board of Disease Intervention Specialists may suspend, revoke, or refuse to renew a certificate of registration, it shall set the matter for a hearing before the board, and, at least twenty (20) calendar days prior to the date set for hearing, it shall give written notice to the accused of the charges made and the date and place of the hearing.

(2) Service of the notice may be made by personal service or by sending it by registered mail to the last known business address of the accused.

(3) The accused shall have the opportunity to be heard in person and by counsel.

(4) A stenographic record of the hearing shall be kept, and a transcript thereof filed with the board.

(b) The order of the board shall be issued within thirty (30) days after the termination of the hearing.

(c) Notice of the order of the board shall be given to the accused, either by personal service or by registered mail sent to the last known business address of the accused, within ten (10) calendar days after the order is issued.

History. Acts 1993, No. 107, § 16.

CHAPTER 99

RESPIRATORY CARE PRACTITIONERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REGULATORY AGENCIES.
3. LICENSING.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-84-101 et seq.

RESEARCH REFERENCES

ALR. Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Rights as to notice and hearing in proceeding to revoke or suspend license to

practice medicine. 10 A.L.R.5th 1.

False or fraudulent statements or non-disclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner. 32 A.L.R.5th 57.

Am. Jur. 61 Am. Jur. 2d, Phys. & S., § 26 et seq.

C.J.S. 70 C.J.S., Phys. & S., 6 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-99-101. Short title.

17-99-102. Definitions.

SECTION.

17-99-103. Penalty — Injunction.

17-99-101. Short title.

This chapter shall be cited as the "Arkansas Respiratory Care Act".

History. Acts 1969, No. 168, § 19; A.S.A. 1947, § 72-1618; Acts 1987, No. 952, § 17.

17-99-102. Definitions.

As used in this chapter:

- (1) "Board" means the Arkansas State Medical Board;
- (2) "Committee" means the Arkansas State Respiratory Care Examining Committee;
- (3) "Licensed allied health practitioner" means any person formally trained and tested in an allied health field qualified to deliver medical care to the public and licensed in the State of Arkansas.

(4) "Qualified medical director" means a licensed physician who is the medical director of any inpatient or outpatient respiratory care service, department, home care agency, or long-term care facility;

(5)(A) "Respiratory care" means the practice of the principles, techniques, psychology, and theories of cardiopulmonary medicine under the verbal or written direction or prescription of a licensed physician or under the supervision of a qualified medical director, or both.

(B) Respiratory care shall include, but not be limited to, the following:

(i) Evaluation and treatment of individuals whose cardiopulmonary functions have been threatened or impaired by developmental defects, the aging process, physical injury or disease, or anticipated dysfunction of the cardiopulmonary system;

(ii) Evaluation techniques, including cardiopulmonary function assessment, gas exchange evaluation, the need and effectiveness of therapeutic modalities and procedures, and assessment and evaluation of the need for extended care and home care procedures and equipment; and

(iii)(a) The professional application of techniques, equipment, and procedures involved in the administration of respiratory care, such as:

(1) Therapeutic gas administration;

(2) Prescribed medications;

(3) Emergency cardiac, respiratory, and cardiopulmonary resuscitation measures;

(4) Establishing and maintaining artificial airways;

(5) Cardiopulmonary function tests;

(6) Testing and obtaining physiological evaluation of arterial and venous blood samples;

(7) Exercises designed for the rehabilitation of the cardiopulmonary handicapped;

(8) Maintaining postural drainage, vibration and chest percussion, aerosol administration, breathing exercises, and artificial and mechanical ventilation; and

(9) Cleaning and sterilization of cardiopulmonary function equipment and its maintenance.

(b) Those techniques may be applied in the treatment of the individual or patient in groups or through healthcare facilities, organizations, or agencies; and

(6) "Respiratory care practitioner" means a licensed person who practices respiratory care as defined in this chapter under the prescription and direction of a licensed physician.

History. Acts 1969, No. 168, § 1; A.S.A. 1947, § 72-1601; Acts 1987, No. 952, § 1; 1995, No. 1094, § 1; 2001, No. 1049, § 2.

17-99-103. Penalty — Injunction.

(a) Any person violating the provisions of this chapter shall be guilty of a misdemeanor. Upon conviction, that person shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a period of not less than one (1) month nor more than six (6) months, or by both fine and imprisonment. Each day of violation shall constitute a separate offense.

(b) The courts of record in this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of respiratory care in the county in which the alleged unlawful practice occurred or in which the defendant resides. The issuance of an injunction shall not relieve a person from criminal prosecution for violation of this chapter, but the remedy of injunction shall be in addition to liability for criminal prosecution.

History. Acts 1969, No. 168, §§ 15, 16; A.S.A. 1947, §§ 72-1615, 72-1616; Acts 1987, No. 952, §§ 13, 14.

SUBCHAPTER 2 — REGULATORY AGENCIES**SECTION.**

17-99-201. Medical board — Powers and duties.

17-99-202. Medical board — Meetings.

17-99-203. Arkansas State Respiratory Care Examining Committee.

SECTION.

17-99-204. Board responsibility for finances — Compensation for committee.

17-99-205. Continuing education.

Cross References. Board members not to be held personally liable for actions as board members, § 17-80-103.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup

act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-99-201. Medical board — Powers and duties.

(a) The Arkansas State Medical Board shall administer the provisions of this chapter.

(b) The board, with the advice and assistance of the Arkansas State Respiratory Care Examining Committee, shall:

- (1) Pass upon the qualifications of applicants for licensure;
- (2) Provide for a nationally standardized examination;
- (3) Determine the applicants who successfully pass the examinations; and
- (4) License those applicants who meet the qualifications provided in this chapter.

(c) In addition to the other powers and duties set out elsewhere in this chapter, the board shall:

(1) Adopt and put into effect rules and regulations to carry this chapter into effect;

(2) Investigate reported violations of this chapter, and take such steps as may be necessary to enforce the chapter;

(3)(A) Keep a record of its proceedings and a record of all persons registered under this chapter.

(B) The register shall show:

- (i) The name of every registrant;
- (ii) His or her last known place of business;
- (iii) His or her last known place of residence; and
- (iv) The date and number of his or her license;

(4)(A) Compile a list, which shall be printed annually, of all respiratory care practitioners who are licensed to practice respiratory care in the State of Arkansas.

(B) It shall furnish a copy of the list to all persons requesting it upon the payment of such fee as may be fixed by the board to compensate for the cost of printing the list;

(5)(A) With the advice and assistance of the committee, adopt rules and regulations for the issuance of temporary permits for students and graduates of approved training programs to practice limited respiratory care under the supervision of a licensed respiratory care practitioner or physician.

(B) Rules and regulations shall be adopted defining for the purposes of this chapter the terms "students", "limited", "supervision", and "approved training programs"; and

(6) With the advice and assistance of the committee, adopt rules and regulations for the issuance of licenses for respiratory care practitioners and put them into effect.

History. Acts 1969, No. 168, §§ 2, 6; 1987, No. 952, §§ 2, 4; 1995, No. 1094, A.S.A. 1947, §§ 72-1602, 72-1606; Acts § 2.

17-99-202. Medical board — Meetings.

(a) The Arkansas State Medical Board shall hold its regular meetings on the fourth Thursday in November and the fourth Thursday in June and shall have the power to call special meetings at such times as it deems necessary.

(b) It may meet at such places as a majority may agree upon, consulting the convenience of the board and applicants for examination and certificates.

History. Acts 1969, No. 168, § 4; A.S.A. 1947, § 72-1604.

17-99-203. Arkansas State Respiratory Care Examining Committee.

(a) There is created the Arkansas State Respiratory Care Examining Committee to assist the Arkansas State Medical Board in carrying out the provisions of this chapter.

(b) The committee shall consist of five (5) members, appointed by the Governor for a term of three (3) years:

(1)(A) One (1) member shall be a board-certified anesthesiologist.

(B) The Governor shall appoint that member upon the advice and recommendation of the board;

(2)(A) One (1) member shall be a member of the American College of Chest Physicians.

(B) The Governor shall appoint that member upon the advice and recommendation of the board;

(3)(A) Three (3) members shall be licensed under this chapter.

(B) The Governor shall appoint those members upon the advice and recommendation of the Arkansas Society for Respiratory Care.

(c)(1) The committee shall meet with the board at its regular meetings and assist in conducting all examinations and shall have the power to call special meetings at such times as it deems necessary.

(2) A majority of the committee shall have the power to call a special meeting.

History. Acts 1969, No. 168, §§ 3, 5; A.S.A. 1947, §§ 72-1603, 72-1605; Acts 1987, No. 952, § 3; 1995, No. 1094, § 3.

changed the name of the Arkansas State Inhalation Therapy Examining Committee to the Arkansas State Respiratory Care Examining Committee.

Publisher's Notes. Acts 1987, No. 952

17-99-204. Board responsibility for finances — Compensation for committee.

(a) All fees and penalties provided for in this chapter shall be received by the Arkansas State Medical Board and shall be expended by it in furtherance of the purposes of this chapter and in accordance with the provisions of § 17-95-305.

(b) The members of the Arkansas State Respiratory Care Examining Committee may receive expense reimbursement in accordance with § 25-16-901 et seq.

(c) It shall not be lawful for the board or any member of the board, in any manner whatever or for any purpose, to charge or obligate the State of Arkansas for the payment of any money whatever.

History. Acts 1969, No. 168, § 17; A.S.A. 1947, § 72-1617; Acts 1987, No. 952, § 15; 1997, No. 250, § 171.

17-99-205. Continuing education.

The Arkansas State Medical Board, in cooperation with the Arkansas Society for Respiratory Care, shall develop and implement rules and regulations for continuing education.

History. Acts 1969, No. 168, § 20, as added by Acts 1987, No. 952, § 16; 2001, No. 1049, § 1.

SUBCHAPTER 3 — LICENSING

- SECTION.
 17-99-301. License required — Exceptions.
 17-99-302. Qualifications and examination of applicants — Fees — Waiver.
 17-99-303. Issuance and recording.
 17-99-304. Reciprocity.
 17-99-305. Temporary permits.
 17-99-306. Annual registration — Failure to reregister.

- SECTION.
 17-99-307. Denial, suspension, or revocation — Grounds.
 17-99-308. Denial, suspension, or revocation — Procedure.
 17-99-309. Out-of-state licenses.
 17-99-310. Medical director — Powers and duties.

Cross References. Continuing education requirements, § 17-80-104.
 Licenses and permits, removal of dis-

qualification for criminal offenses, § 17-1-103.

17-99-301. License required — Exceptions.

(a) It shall be unlawful for any person to practice respiratory care or to profess to be a respiratory care practitioner or to use any initials, letters, words, abbreviations, or insignia which indicate that he or she is a respiratory care practitioner, or to practice or to assume the duties incident to respiratory care, without first obtaining from the Arkansas State Medical Board a license authorizing the person to practice respiratory care in this state.

(b)(1) Nothing in this chapter shall be deemed to prohibit any person licensed under any act in this state from engaging in the practice for which he or she is licensed.

(2)(A) A licensed physician or a licensed advanced practice nurse shall be exempt from the requirement of obtaining a license to practice respiratory care.

(B) A licensed registered nurse or a licensed practical nurse qualified in and engaged in respiratory care under the supervision of

a licensed physician or a licensed advanced practice nurse within the terms of their collaborative agreement shall be exempt from the requirement of obtaining a license to practice respiratory care.

(C) A licensed allied health practitioner who passes an examination that included content in one (1) or more of the functions included in the definition of respiratory care in § 17-99-102 shall not be prohibited from performing such procedures for which he or she was tested.

(3) Nothing in this chapter shall be construed to prohibit or to require a license hereunder with respect to:

(A) The rendering of services in case of an emergency or acute care situation;

(B) The administration of oxygen or other resuscitation procedures to participants in or spectators at athletic events;

(C) Any person pursuing a course of study leading to a degree or certificate in respiratory care at an accredited or approved educational program approved by the Arkansas State Respiratory Care Examining Committee, if the activities and services constitute a part of the supervised course of study and the person is designated by a title which clearly indicates the student or trainee status;

(D) Self-care by a patient or gratuitous care by a friend or family member who does not represent or hold himself or herself out to be a respiratory care practitioner;

(E) The respiratory care practitioner who demonstrates advances in the art and techniques of respiratory care learned through formalized or specialized training;

(F) Any person working in the military service or federal health-care facilities when functioning in the course of his or her assigned duties;

(G)(i) Any person who has demonstrated his or her competency in one (1) or more areas covered by this chapter who performs only those functions that the person is qualified by examination to perform.

(ii) The committee and the board shall have the authority to evaluate the standards of examinations and examining organizations and to reject qualification by inadequate examinations and examining organizations;

(H) Medically trained personnel employed in a designated critical access hospital licensed as such by the Department of Health; and

(I) The practice of respiratory care, when done in connection with the practice of the religious principles or tenets of any well-recognized church or denomination which relies upon prayer or spiritual means of healing.

History. Acts 1969, No. 168, § 15; 952, § 13; 1995, No. 1094, § 4; 2001, No. A.S.A. 1947, § 72-1615; Acts 1987, No. 1049, § 3.

17-99-302. Qualifications and examination of applicants — Fees — Waiver.

(a) The Arkansas State Medical Board shall register as a respiratory care practitioner and shall issue a license to:

(1) Any person who satisfactorily passes the examination provided for in this chapter, and who otherwise meets the requirements for qualification contained herein and pays a fee not to exceed one hundred fifty dollars (\$150);

(2) Any person who furnishes sufficient and satisfactory written evidence to the Arkansas State Medical Board that the person has received registration or certification, or both, by the National Board for Respiratory Care or its successor organization and who, at the time of his or her application, shall pay the Arkansas State Medical Board a fee not to exceed one hundred fifty dollars (\$150); and

(3)(A) Any person, whether or not he or she has passed the examination provided for in this chapter, who through a notarized affidavit submitted to the Arkansas State Medical Board by January 1, 2002, demonstrates that he or she has been engaged in the practice of respiratory care for at least two (2) years during the three (3) consecutive years prior to September 1, 2001, and who submits an application and a fee not to exceed one hundred fifty dollars (\$150).

(B) Any person licensed under this provision must complete the entry level requirements for certification in respiratory care and, no later than January 1, 2005, must pass the examination provided for in this chapter.

(b) Each applicant must:

(1) Be at least eighteen (18) years of age;

(2) Be of good moral character;

(3) Have been awarded a high school diploma or its equivalent;

(4) Have satisfactorily completed training in a respiratory care program which has been approved by the Arkansas State Respiratory Care Examining Committee, to include adequate instruction in basic medical science, clinical science, and respiratory care theory and procedures; and

(5) Have passed an examination approved by the Arkansas State Medical Board and the committee, unless exempted by other provisions of this chapter.

(c) All examinations of applicants for a license to practice respiratory care shall be held in designated areas of the state at a time and place published by the Arkansas State Medical Board.

(d) Applicants shall be given written examinations on the following subjects:

(1) Clinical data;

(2) Equipment; and

(3) Therapeutic procedures.

(e) A fee not to exceed the prevailing rate set by the National Board for Respiratory Care or its successor organization must accompany the application.

History. Acts 1969, No. 168, §§ 7, 10; A.S.A. 1947, §§ 72-1607, 72-1610; Acts 1987, No. 952, §§ 5, 8; 1993, No. 1219, § 15; 1995, No. 1094, § 5; 2001, No. 1049, §§ 4-6.

A.C.R.C. Notes. Acts 1987, No. 952, § 8, provided, in part, that a person who, on or before July 1, 1988, furnishes sufficient and satisfactory written evidence to the board that the person has received registration as a registered respiratory therapist or certification as a certified respiratory therapy technician by the National Board for Respiratory Care shall

not be required to take an examination as a condition for licensure.

Publisher's Notes. Former subdivision (a)(3) provided: "Any person, whether or not he has passed the examination provided for in this chapter, who, through a notarized affidavit submitted to the board by January 1, 1996, demonstrates that he, as of September 1, 1995, or within the three-year period prior to September 1, 1995, is or was providing respiratory care as defined in § 17-99-102, and who submits an application and a fee not to exceed one hundred fifty dollars (\$150)."

17-99-303. Issuance and recording.

(a) The Arkansas State Medical Board shall register as a respiratory care practitioner each applicant who provides evidence of his or her fitness for licensure under the terms of this chapter.

(b) It shall issue to each person registered a license, which shall be prima facie evidence of the right of the person to practice respiratory care, subject to the conditions and limitations of this chapter.

(c) Proof of licensure must be made upon request.

(d)(1) Whenever the board determines for any reason not to issue a license, it shall enter an order denying the application.

(2) Whenever the board determines for any reason to suspend, revoke, or refuse to renew a license, it shall enter an order taking that action.

(e) All review proceedings shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1969, No. 168, § 8; A.S.A. 1947, § 72-1608; Acts 1987, No. 952, § 6; 1995, No. 1094, § 6.

17-99-304. Reciprocity.

(a) A legally licensed practitioner who has been issued a license to practice respiratory care in another state or territory whose requirements for registration and licensure were at the time of his or her registration or licensure equal to the requirements contained in this chapter may be registered and issued a license by the Arkansas State Medical Board if the state or territory from which the applicant comes accords a similar privilege of registration and licensure to persons registered and licensed in the State of Arkansas by the board.

(b) The issuance of the license by reciprocity by the board shall be at the sole discretion of the board, and the board may provide rules and regulations governing such admission as it may deem necessary or desirable.

History. Acts 1969, No. 168, § 11; A.S.A. 1947, § 72-1611; Acts 1987, No. 952, § 9.

17-99-305. Temporary permits.

(a) In cases of emergency, the Executive Secretary of the Arkansas State Medical Board may issue a temporary permit without examination to practice respiratory care to persons who are not licensed in other states, but who otherwise meet the qualifications for licensure set out in this chapter.

(b) Such emergency temporary license shall expire at the date of the next board meeting, unless the board ratifies or extends the action of the executive secretary.

History. Acts 1969, No. 168, § 9; A.S.A. 1947, § 72-1609; Acts 1987, No. 952, § 7; 1995, No. 1094, § 7.

17-99-306. Annual registration — Failure to reregister.

(a)(1) A license or reregistration fee not to exceed fifty dollars (\$50.00) shall be paid to the Arkansas State Medical Board by each respiratory care practitioner who holds a license to practice respiratory care in the State of Arkansas.

(2) The reregistration fee shall be paid before or during the birth month of the license holder beginning in 1998, and each year thereafter. During the implementation year of 1998, fees shall be prorated.

(3) Failure to reregister and pay the fee by the last day of the birth month of the license holder shall cause the license of any person so failing to reregister to expire automatically.

(b)(1) Any delinquent license of less than five (5) years may be reinstated by paying all delinquent fees and a penalty not to exceed fifty dollars (\$50.00) for each year or part of a year it has been delinquent.

(2) Any person who shall fail to reregister and pay the annual license fee for five (5) or more consecutive years shall be required to be reexamined by the board before the license may be reinstated.

History. Acts 1969, No. 168, § 12; 952, § 10; 1995, No. 1094, § 8; 1997, No. A.S.A. 1947, § 72-1612; Acts 1987, No. 313, § 3.

17-99-307. Denial, suspension, or revocation — Grounds.

The Arkansas State Medical Board, after due notice and hearing, may revoke, suspend, or refuse to renew any license or permit or place on probation or otherwise reprimand a licensee or permit holder or deny a license to an applicant who:

(1) Is habitually drunk or who is addicted to the use of narcotic drugs;

(2) Is, in the judgment of the board, guilty of immoral or unprofessional conduct;

- (3) Has been convicted of any crime involving moral turpitude;
- (4) Is guilty, in the judgment of the board, of gross negligence in his or her practice as a respiratory care practitioner;
- (5) Has obtained or attempted to obtain registration by fraud or material misrepresentation;
- (6) Has treated or undertaken to treat ailments of human beings other than by respiratory care and as authorized by this chapter or who has undertaken to practice independently of the prescription and direction of a licensed physician; or
- (7) Has been found to have violated any provisions of this chapter or rules and regulations of the Arkansas State Respiratory Care Examining Committee or board.

History. Acts 1969, No. 168, § 13;
A.S.A. 1947, § 72-1613; Acts 1987, No.
952, § 11; 1995, No. 1094, § 9.

17-99-308. Denial, suspension, or revocation — Procedure.

(a) The procedure on all refusals, revocations, and suspensions of registration shall be prescribed by the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(b)(1) Any person may file a complaint with the Arkansas State Medical Board against any person having a license to practice respiratory care in this state charging the person with having violated the provisions of § 17-99-307.

(2) The complaint shall set forth a specification of charges in sufficient detail so as to disclose to the accused fully and completely the alleged acts of misconduct for which he or she is charged.

(3) When the complaint is filed, the Secretary of the Arkansas State Medical Board shall mail a copy to the accused by registered mail at his or her last address of record, with a written notice of the time and place of hearing, advising him or her that he or she may be present in person and by counsel, if he or she so desires, to offer evidence and be heard in his or her defense.

(c)(1) At the time and place fixed for a hearing before the board, the board shall receive evidence upon the subject matter under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his defense.

(2) The board shall not be bound by strict or technical rules of evidence but shall consider all evidence fully and fairly. However, all oral testimony considered by the board must be under oath.

(d)(1) Appeal may be had by either of the parties from the decision of the board as now provided by law.

(2) All evidence considered by the board shall be reduced to writing and available for the purposes of appeal.

(e) Nothing in this section shall be construed so as to deprive any person of his or her rights without full, fair, and impartial hearing.

History. Acts 1969, No. 168, §§ 13, 14; A.S.A. 1947, §§ 72-1613, 72-1614; Acts 1987, No. 952, § 12.

17-99-309. Out-of-state licenses.

(a) A legally licensed practitioner who has been issued a license to practice respiratory care in another state or territory whose requirements for licensure were equal at the time of his or her licensure to the requirements contained in this chapter may be licensed by the Arkansas State Medical Board, provided that the state or territory from which the applicant comes accords a similar privilege of registration and licensure to persons licensed in the State of Arkansas by the board.

(b) The issuance of a license by reciprocity by the board shall be at the sole discretion of the board.

History. Acts 1995, No. 1094, § 10.

17-99-310. Medical director — Powers and duties.

A qualified medical director shall:

(1) Be readily available to respiratory care practitioners employed by or providing services for the organization he or she directs; and

(2) Establish a policy that prohibits any person from ordering respiratory care for a patient, except a physician who has medical responsibility for the patient.

History. Acts 1995, No. 1094, § 11.

CHAPTER 100

**SPEECH-LANGUAGE PATHOLOGISTS AND
AUDIOLOGISTS**

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY.
- 3. LICENSING.

A.C.R.C. Notes. References to “this chapter” in §§ 17-100-101 — 17-100-107 may not apply to § 17-100-108 which was enacted subsequently.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-97-101 et seq.

Acts 1975, No. 277, § 21, provided that nothing contained in that act should be construed to prevent or impair the administration or enforcement of any other provision of the laws of this state.

Effective Dates. Acts 1975, No. 277, § 23: July 1, 1975.

RESEARCH REFERENCES

ALR. Physician’s or other healer’s conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplin-

ary action. 44 A.L.R.4th 248.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

Am. Jur. 61 Am. Jur. 2d, Phys. & S.,
§ 26 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-100-101. Short title.
- 17-100-102. Public policy.
- 17-100-103. Definitions.
- 17-100-104. Exemptions.
- 17-100-105. Criminal penalties.

SECTION.

- 17-100-106. Civil penalties.
- 17-100-107. Injunction against unlawful
practice.
- 17-100-108. Billing.

Effective Dates. Acts 1980 (1st Ex. Sess.), No. 44, § 3: Jan. 30, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present language excluding speech pathologists and audiologists employed by public school systems or the state or federal government from the provisions of the Speech Pathologists and

Audiologists Licensing Act is unclear and that this act is immediately necessary in order to clarify such language. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-100-101. Short title.

This chapter may be cited as the "Licensure Act of Speech-Language Pathologists and Audiologists".

History. Acts 1975, No. 277, § 1; A.S.A. 1947, § 72-1801; Acts 1993, No. 121, § 1.

17-100-102. Public policy.

It is declared to be a policy of the State of Arkansas that, in order to safeguard the public health, safety, and welfare; to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and from unprofessional conduct on the part of qualified speech-language pathologists and audiologists; and to help to assure the availability of the highest possible quality speech-language pathology and audiology services to the communicatively handicapped people of this state, it is necessary to provide regulatory authority over persons offering speech-language pathology and audiology services to the public.

History. Acts 1975, No. 277, § 2; A.S.A. 1947, § 72-1802; Acts 1993, No. 121, § 2.

17-100-103. Definitions.

As used in this chapter:

(1) "ASHA" means the American Speech-Language-Hearing Association;

(2) "Association" means the Arkansas Speech-Language-Hearing Association;

(3) "Audiologist" means an individual who practices audiology by any title or description of services incorporating the words "audiologist", "hearing clinician", "hearing therapist", or any similar title or description of services;

(4)(A) "Audiology" means the application of principles, methods, and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, or rehabilitation related to hearing and disorders of hearing for the purpose of evaluating, identifying, preventing, ameliorating, or modifying such disorders and conditions in individuals and groups of individuals.

(B) As used in this subdivision (4), "habilitation" and "rehabilitation" include, but are not limited to, hearing aid evaluation and recommendations, auditory training, and speech reading;

(5) "Board" means the Board of Examiners in Speech-Language Pathology and Audiology;

(6) "Person" means any individual, organization, or corporate body, except that only an individual may be licensed under this chapter;

(7) "Speech-language pathologist" means an individual who practices speech-language pathology by any title or description of services incorporating the words "speech-language pathologist", "speech therapist", "speech correctionist", "speech clinician", "language pathologist", "language therapist", "logopedist", "communicologist", "voice therapist", "voice pathologist", or any similar title or description of service;

(8) "Speech-language pathology" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, or language for the purpose of evaluating, preventing, ameliorating, or modifying such disorders and conditions in individuals and groups of individuals; and

(9) "Speech-language pathology support personnel" or any variation, synonym, or coinage of the term means an individual who holds a bachelor's degree in speech pathology or any other individual who meets minimum qualifications established by the board, which are less than those established by this chapter as necessary for licensing as a speech-language pathologist, and who provides services as prescribed, directed, and supervised by a speech-language pathologist licensed under this chapter.

History. Acts 1975, No. 277, § 7; A.S.A. 1947, § 72-1807; Acts 1993, No. 121, § 3; 1995, No. 826, § 1.

17-100-104. Exemptions.

Nothing in this chapter shall be construed as preventing or restricting:

(1) A physician or surgeon from engaging in the practice of medicine in this state;

(2) A hearing aid dealer from engaging in the business of fitting and selling hearing aids in this state in accordance with § 17-84-101 et seq.;

(3) Any person licensed in this state by any other law from engaging in the profession or occupation for which he or she is licensed;

(4)(A) A person from performing speech-language pathology or audiology services solely within the confines or under the jurisdiction of a public school system if that person holds a valid and current certificate as a speech therapist or speech-language pathologist issued by the Department of Education.

(B) However, without obtaining a license under this chapter, such a person may consult with or disseminate his or her research findings and other specific information to speech-language pathologists and audiologists outside the jurisdiction of the school district by which he or she is employed. Such a person may also offer lectures to the public for a fee, monetary or other, without being licensed under this chapter.

(C) The person may additionally elect to be subject to this chapter;

(5) The activities and services of persons pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university, if the activities and services constitute a part of a supervised course of study and if the persons are designated as speech-language pathology interns, speech-language pathology trainees, audiology interns, audiology trainees, or by other such titles clearly indicating the training status appropriate to their level of training;

(6)(A) The performance of speech-language pathology or audiology services in this state by any person not a resident of this state who is not licensed under this chapter, if the services are performed for no more than five (5) days in any calendar year and in cooperation with a speech-language pathologist or audiologist licensed under this chapter and if the person meets the qualifications and requirements for application for licensure described in § 17-100-302(b).

(B) The performance of speech-language pathology or audiology services in this state by a person not a resident of this state who is not licensed under this chapter, but who is licensed under the law of another state which has established licensure requirements at least equivalent to those established by § 17-100-302(b), or who is the holder of the American Speech-Language-Hearing Association certificate of clinical competence in speech-language pathology or audiology or its equivalent, if such services are performed in the state for no more than thirty (30) days in any fiscal year and are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter;

(7) A person from performing speech-language pathology or audiology services solely within the confines of the person's duties as an employee of the State of Arkansas, provided that the person was an employee of the State of Arkansas on January 1, 1993, and, furthermore, this exemption applies to such state employees who subsequently transfer to another agency of the state; or

(8)(A) A person from performing speech-language pathology services solely within the confines of the person's duties as an employee of any entity licensed or certified as a developmental disability services community provider by the Division of Developmental Disability Services of the Department of Human Services, if that person holds a minimum of a bachelor's degree in speech-language pathology and is supervised by a licensed speech-language pathologist.

(B) The supervision of the licensed speech-language pathologist shall be pursuant to the Pilot Project for Use of Speech-Language Assistants in Schools.

(C) Bachelor's degree-level personnel shall be limited to performing the scope of responsibilities and shall be subject to the same restrictions set forth in the Pilot Project for Use of Speech-Language Assistants in Schools.

(D) These persons shall be required to comply with state regulations as speech-language pathology support personnel no later than January 1, 1997.

History. Acts 1975, No. 277, § 9; 1980 § 72-1809; Acts 1993, No. 121, § 4; 1995, (1st Ex. Sess.), No. 44, § 1; A.S.A. 1947, No. 826, § 3.

17-100-105. Criminal penalties.

Any person who violates any provision of this chapter shall upon conviction be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisoned in the county jail for a period not exceeding six (6) months, or both.

History. Acts 1975, No. 277, § 20; A.S.A. 1947, § 72-1820.

17-100-106. Civil penalties.

(a) Any person who, after notice and hearing, is found by the Board of Examiners in Speech-Language Pathology and Audiology to have violated any provision of this chapter or any rule or regulation of the board may be assessed a civil penalty not to exceed one thousand dollars (\$1,000) for each violation.

(b) The penalty provided for in this section, plus interest at ten percent (10%) per annum, shall be paid to the board before the speech-language pathologist or audiologist can be issued a license to engage in practice in this state.

(c) The board shall have the authority to withhold approval for up to six (6) months of any application for any person who prior to approval of the application has been found in violation of this chapter.

(d) The board shall have the authority to file suit in the Pulaski County Circuit Court or the circuit court of the county in which the person resides to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service on the person of the order assessing the penalty, unless the circuit court enters a stay pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1993, No. 121, § 5.

17-100-107. Injunction against unlawful practice.

When any person not licensed by the Board of Examiners in Speech-Language Pathology and Audiology, or any licensee, shall engage in the practice of speech-language pathology or audiology as herein defined in violation of this chapter or the rules and regulations of the board, the board shall have the authority to go into the Pulaski County Circuit Court or the circuit court of the county in which the person resides and, upon affidavit, secure a writ of injunction, without bond, restraining and prohibiting the person from the practice of speech-language pathology or audiology in violation of this chapter.

History. Acts 1993, No. 121, § 5.

17-100-108. Billing.

(a) Services provided by speech-language pathology support personnel which are prescribed, directed, and supervised by a speech-language pathologist licensed under this chapter may be billed to third parties as speech-language services or therapies.

(b) The billings may be in the name of the licensed speech-language pathologist or clinic of a licensed speech-language pathologist or a developmental disability day treatment clinic services community provider licensed or certified by the Division of Developmental Disability Services of the Department of Human Services that employs the speech-language pathology support personnel.

History. Acts 1995, No. 826, § 1.

A.C.R.C. Notes. References to “this chapter” in §§ 17-100-101—17-100-107

may not apply to this section which was enacted subsequently.

SUBCHAPTER 2 — BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

SECTION.

17-100-201. Creation — Members.
17-100-202. Powers and duties.

SECTION.

17-100-203. Organization and proceedings.

SECTION.

- 17-100-204. Officers and employees.
- 17-100-205. [Repealed.]
- 17-100-206. Disposition of funds — Reports.

SECTION.

- 17-100-207. Audiologists — Licensing.

Effective Dates. Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: “It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into

effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-100-201. Creation — Members.

(a) There is established as an independent agency of the executive branch of the government of the State of Arkansas the Board of Examiners in Speech-Language Pathology and Audiology.

(b)(1)(A) The board shall be composed of eight (8) members appointed by the Governor to three-year terms.

(B) The members of the board shall be residents of this state for at least two (2) years immediately preceding their appointments.

(2)(A)(i) Seven (7) members of the board shall be appointed from names submitted by the Arkansas Speech-Language-Hearing Association or other professional groups or individuals.

(ii) Not less than thirty (30) days before the end of each fiscal year, the association shall recommend not more than three (3) persons for each vacancy.

(B) The board shall have the following professional members:

(i) Two (2) speech-language pathologists;

(ii) Two (2) audiologists; and

(iii) A fifth member who shall be either a speech-language pathologist or an audiologist.

(C) There shall be one (1) consumer member and one (1) public representative member, neither of whom shall be engaged in a health-related profession.

(3)(A) One (1) member of the board shall represent the elderly.

(B) The representative of the elderly shall:

(i) Be sixty (60) years of age or older;

(ii) Not be actively engaged in or retired from the practice of speech-language pathology or audiology;

(iii) Be appointed from the state at large, subject to confirmation by the Senate; and

(iv) Be a full voting member but shall not participate in the grading of examinations.

(4) The consumer representative position and the representative of the elderly position may not be filled by the same person.

(c)(1) No person shall be eligible to serve more than two (2) full consecutive terms.

(2) Terms shall begin on the first day of the fiscal year and end on the last day of the fiscal year in which members are appointed before commencing the terms prescribed by this section.

(d) In the event of a midterm vacancy, the association shall recommend as soon as practicable not more than three (3) persons to fill the professional, consumer, or public representative vacancies. As soon thereafter as practicable, the Governor shall appoint one (1) of these persons who shall fill the unexpired term.

(e) Board members may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1975, No. 277, §§ 3, 6; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 72-1803, 72-1806; Acts 1993, No. 121, § 6; 1997, No. 250, § 172; 2001, No. 1553, § 27.

Publisher's Notes. The terms of the

members of the Board of Examiners in Speech-Language Pathology and Audiology, other than the representative of the elderly, are arranged so that three terms expire in one year, two in the next year, and two in the third year.

17-100-202. Powers and duties.

(a) The Board of Examiners in Speech-Language Pathology and Audiology shall administer, coordinate, and enforce the provisions of this chapter and evaluate the qualifications and supervise the examinations of applicants for licensure under this chapter. The board may issue subpoenas, examine witnesses, and administer oaths and, at its discretion, shall investigate allegations or practices violating the provisions of this chapter.

(b)(1) The board shall adopt rules and regulations relating to professional conduct commensurate with the policy of this chapter, including, but not limited to, regulations which establish ethical standards of practice necessary to the enforcement and orderly administration of this chapter and, for other purposes, may amend or repeal the same in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) The board shall promulgate regulations regarding the use of speech-language pathology support personnel by practitioners of speech-language pathology.

(3)(A) All rules and regulations promulgated pursuant to this section shall be reviewed by the House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

(B) Following their adoption, the rules and regulations shall govern and control the professional conduct of every person who holds a license to practice speech-language pathology or audiology in this state.

(c) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to the authority and procedure of the board.

(d) The board shall conduct hearings and keep records and minutes necessary to the orderly dispatch of its functions. The board shall provide notice to the appropriate persons in a manner it considers appropriate of the times and places of all hearings authorized by this subsection.

(e) The conferral or enumeration of specific powers elsewhere in this chapter shall not be construed as a limitation of the general functions conferred by this subsection.

History. Acts 1975, No. 277, § 4; A.S.A. 1947, § 72-1804; Acts 1993, No. 121, § 7; 1995, No. 826, § 2; 1997, No. 179, § 16.

A.C.R.C. Notes. As amended by Acts 1995, No. 826, § 2, subdivision (b)(2) ended: "by January 1, 1996."

Acts 2010, No. 18, § 4, provided: "INVESTIGATOR. The Board of Examiners in Speech-Language Pathology and Audiology shall contract with an outside investigator, as needed, to perform investigations and conduct inspections of alleged wrongdoing. The duties of the investigator

hired shall include, but not be limited to, investigation and inspection of all complaints as determined by the Board, to determine whether or not any persons have:

"(1) Practiced their profession in such a way as to endanger the general health and welfare of the public; or

"(2) Otherwise violated the practice act or rules and regulations of the Speech-Language Pathology and Audiology Board."

17-100-203. Organization and proceedings.

(a)(1) The Board of Examiners in Speech-Language Pathology and Audiology shall meet during the first sixty (60) days of each fiscal year to select a chair and other officers for other appropriate purposes. At least one (1) additional meeting shall be held before the end of each calendar year.

(2) Further meetings may be convened at the call of the chair or the written request of any two (2) board members.

(3) All meetings of the board shall be open to the public, except that the board may close sessions to prepare, approve, grade, or administer examinations or, upon request of an applicant who fails an examination, to prepare a response indicating any reason for his or her failure.

(b) Four (4) members of the board shall constitute a quorum for all purposes, but in no instance shall a meeting of four (4) board members which does not include both a speech-language pathologist and audiologist be considered a certain quorum.

(c) The board shall adopt a seal by which it shall authenticate its proceedings. Copies of the proceedings, records, and acts of the board and records and acts signed by the chair or the executive secretary and authenticated by the seal shall be prima facie evidence in all courts of this state.

History. Acts 1975, No. 277, §§ 3, 5; A.S.A. 1947, §§ 72-1803, 72-1805; Acts 1993, No. 121, § 8.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

17-100-204. Officers and employees.

(a) The Board of Examiners in Speech-Language Pathology and Audiology may employ and, at its pleasure, discharge an executive secretary and such officers and employees as may be necessary.

(b) The board shall outline duties and fix compensation of employees in accordance with law.

(c) The amount of per diem and mileage and expense moneys paid employees of the board shall be in accordance with applicable law.

History. Acts 1975, No. 277, § 5; A.S.A. 1947, § 72-1805.

17-100-205. [Repealed.]

Publisher's Notes. This section, concerning publication of standards and rules, was repealed by Acts 1993, No. 121,

§ 14. The section was derived from Acts 1975, No. 277, § 18; A.S.A. 1947, § 72-1818.

17-100-206. Disposition of funds — Reports.

(a) All fees and other funds received by the Board of Examiners in Speech-Language Pathology and Audiology shall be deposited into a bank account in the name of the board in one (1) or more banks in this state and shall be used by the board exclusively for payment of reasonable and necessary salaries, maintenance, and operating expenses in the performance of duties imposed on the board under the provisions of this chapter.

(b) The board shall report monthly to the Department of Finance and Administration the amount and source of all revenue received by it pursuant to this chapter during the preceding month.

(c) All appropriate expenses incurred by the board in the administration of the provisions of this chapter shall be paid when vouchers relating to such expenses are exhibited as having been approved by the board.

(d)(1) The board shall be financed from income accruing to it from fees, licenses, and other charges collected by the board, and all such moneys are appropriated to the board.

(2) All employee salaries and other expenses, which may include full or partial financing of continuing professional education programs promulgated by the board under § 17-100-306, shall be paid as budgeted after budgets are approved or within the limitations of any appropriation for that purpose which may be included in any appropriate Arkansas appropriations law.

(e) The board will have the authority to establish and change fees for application, examination, renewal, and delinquency purposes.

History. Acts 1975, No. 277, §§ 5, 17;
A.S.A. 1947, §§ 72-1805, 72-1817.

17-100-207. Audiologists — Licensing.

(a) Notwithstanding § 17-84-101 et seq. or any other law to the contrary, no person who is licensed by the Board of Examiners in Speech-Language Pathology and Audiology under § 17-100-301 et seq. as an audiologist in this state shall be required to be licensed by the Arkansas Board of Hearing Instrument Dispensers. However, the Board of Examiners in Speech-Language Pathology and Audiology shall, no later than July 1 of each year, provide to the Arkansas Board of Hearing Instrument Dispensers a list of all audiologists licensed by the Board of Examiners in Speech-Language Pathology and Audiology.

(b) The Board of Examiners in Speech-Language Pathology and Audiology shall promulgate regulations governing the dispensing of hearing aids by audiologists licensed by the Board of Examiners in Speech-Language Pathology and Audiology, provided that such regulations shall be no less stringent than the regulations adopted by the Arkansas Board of Hearing Instrument Dispensers for the dispensing of hearing aids.

History. Acts 1991, No. 1171, § 1.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-100-301. License required.
- 17-100-302. Eligibility.
- 17-100-303. Examination.
- 17-100-304. Reciprocity.
- 17-100-305. Annual renewal.

SECTION.

- 17-100-306. Continuing education.
- 17-100-307. Denial, suspension, revocation, or other disciplinary action — Reinstatement.
- 17-100-308. Fees.

Cross References. Continuing education requirements, § 17-80-104.

17-100-301. License required.

(a) No person shall practice or represent himself or herself as a speech-language pathologist or audiologist in this state unless he or she is licensed in accordance with the provisions of this chapter.

(b) A license shall be granted either in speech-language pathology or audiology independently. A person may be licensed in both areas if he or she meets the respective qualifications.

History. Acts 1975, No. 277, § 8; A.S.A. 1947, § 72-1808; Acts 1993, No. 121, § 9.

17-100-302. Eligibility.

(a) The Board of Examiners in Speech-Language Pathology and Audiology shall issue a license to any person who meets the requirements of this chapter and pays to the board the initial license fee prescribed in § 17-100-308.

(b) To be eligible for licensure by the board as a speech-language pathologist or audiologist, a person shall:

- (1) Be of good moral character;
- (2) Possess at least a master's degree in the area of speech-language pathology or audiology, as the case may be, from an educational institution recognized by the board;
- (3) Submit evidence of the completion of the educational, clinical experience, and employment requirements, which shall be based on appropriate national standards and prescribed by the rules and regulations adopted pursuant to this chapter; and
- (4) Pass an examination approved by the board. This examination may be taken either before or after the completion of the employment requirement specified pursuant to subdivision (b)(3) of this section.

(c) The board shall issue a provisional license to any person who meets the requirements of this chapter, submits the appropriate

application, and pays to the board the initial license fee prescribed in § 17-100-308.

(d) To be eligible for provisional licensure by the board as a speech-language pathologist or audiologist, a person shall:

(1) Be of good moral character;

(2) Possess at least a master's degree in the area of speech-language pathology or audiology, as the case may be, from an educational institution recognized by the board;

(3) Be in the process of completing the postgraduate professional experience requirement; and

(4) Pass an examination approved by the board.

(e) The purpose of a provisional license is to permit a person to practice speech-language pathology or audiology while completing the postgraduate professional experience as required by this chapter. A person holding a provisional license is authorized to practice speech-language pathology or audiology only while working under the supervision of a person fully licensed by this state in accordance with this chapter.

(f) The board shall have the authority to adopt rules and regulations regarding the term and conditions for which a provisional license is granted.

History. Acts 1975, No. 277, §§ 10, 14;
A.S.A. 1947, §§ 72-1810, 72-1814; Acts
1993, No. 121, § 10.

17-100-303. Examination.

(a)(1) A person eligible for licensure under § 17-100-302 and desirous of licensure shall make application for examination to the Board of Examiners in Speech-Language Pathology and Audiology at least thirty (30) days prior to the date of examination upon a form and in such a manner as the board shall prescribe.

(2) Any application shall be accompanied by the fee prescribed by § 17-100-308, which shall in no case be refunded.

(b)(1) Each applicant for licensure under this chapter shall be examined by the board in a written examination.

(2) Standards for acceptable performance shall be established.

(3) Applicants shall be examined at a time and place and under such supervision as the board may determine. Examinations shall be given at such places within this state as the board may determine at least two (2) times each year, and the board shall make public, in a manner it considers appropriate, and shall appropriately notify all individual applicants of, the time and place of the administration of examinations.

(4) The board may examine in whatever theoretical or applied fields of speech pathology and audiology it considers appropriate and may examine with regard to a person's professional skills and judgment in the utilization of speech pathology or audiology techniques and methods.

(5) The board shall maintain a permanent record of all examination results.

History. Acts 1975, No. 277, §§ 11, 12;
A.S.A. 1947, §§ 72-1811, 72-1812.

17-100-304. Reciprocity.

(a) The Board of Examiners in Speech-Language Pathology and Audiology may waive the examination and grant a license to any applicant who shall present proof of current licensure in another state, the District of Columbia, or territory of the United States which maintains professional standards considered by the board to be equivalent to those set forth in this chapter.

(b) The board may waive the examination and grant a license to any person certified as clinically competent by the American Speech-Language-Hearing Association in the area for which the person is applying for licensure.

(c) A person certified by American Speech-Language-Hearing Association or licensed under the law of another state, a territory of the United States, or the District of Columbia as a speech pathologist or audiologist who has applied for examination and paid the appropriate fees may perform speech pathology and audiology services in this state prior to a determination by the board that the person has successfully completed examination for licensure.

History. Acts 1975, No. 277, §§ 11, 13;
A.S.A. 1947, §§ 72-1811, 72-1813.

17-100-305. Annual renewal.

(a) Licenses issued under this chapter expire and become invalid at 12:00 midnight, June 30 of each year if not renewed.

(b) Every person licensed under this chapter shall, on or before June 30 of each year, pay a fee for renewal of license to the Board of Examiners in Speech-Language Pathology and Audiology.

(c)(1) In the event that payment of the renewal fee is rendered after June 30 of any given year, the board may renew a license upon payment of the renewal of license fee plus a late renewal payment penalty, which shall equal the amount prescribed pursuant to § 17-100-308(a)(4) multiplied by the number of full months which have elapsed since expiration of the license.

(2) No person who requests renewal of a license, whose license has expired, shall be required to submit to examination as a condition to renewal if such a renewal application is made within two (2) years from the date of expiration.

(d) A suspended license is subject to expiration and may be renewed as provided in this section, but the renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated,

to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended.

(e) A license revoked on disciplinary grounds is subject to expiration as provided in subsection (a) of this section, but it may not be renewed. If the license is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the late renewal payment penalty defined in subdivision (c)(1) of this section.

(f) Any person who fails to renew his or her license within five (5) years after the date of its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter. However, the person may apply for and obtain a new license if he or she meets the requirements of this chapter.

History. Acts 1975, No. 277, § 16;
A.S.A. 1947, § 72-1816.

17-100-306. Continuing education.

The Board of Examiners in Speech-Language Pathology and Audiology shall require the applicant for license renewal to present evidence of the satisfactory completion of continuing education requirements as determined and published by the board.

History. Acts 1975, No. 277, § 19;
A.S.A. 1947, § 72-1819.

17-100-307. Denial, suspension, revocation, or other disciplinary action — Reinstatement.

(a) The Board of Examiners in Speech-Language Pathology and Audiology may refuse to issue or renew a license or may suspend or revoke a license when the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct may result from, but not necessarily be limited to:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(2) Being guilty of unprofessional conduct as defined by the rules established by the board or violating the code of ethics adopted and published by the board;

(3)(A) Being convicted of a felony in any court of the United States if the acts for which the licensee or applicant is convicted are found by the board to have a direct bearing on whether he or she should be entrusted to serve the public in the capacity of a speech pathologist or audiologist.

(B) A plea or verdict of guilty made to a charge of a felony or of any offense involving moral turpitude is a conviction within the meaning of this section.

(C) At the direction of the board, and after due notice and an administrative hearing in accordance with the provisions of applicable Arkansas laws, the license of the person so convicted shall be suspended or revoked or the board shall decline to issue a license when:

(i) The time for appeal has elapsed;

(ii) The judgment of conviction has been affirmed on appeal; or

(iii) An order granting probation has been made suspending the imposition of sentence, without regard to a subsequent order under the provisions of state law allowing the withdrawal of a guilty plea and the substitution of a not guilty plea, or the setting aside of a guilty verdict, or the dismissal of the acquisition, information, or indictment;

(4) Violating any lawful order, rule, or regulation rendered or adopted by the board; or

(5) Violating any provision of this chapter.

(b) The board shall deny any application for, or issue a letter of reprimand, or censure, suspend, revoke, or impose probationary conditions upon, the license or licensee as ordered by the board in any decision made after a hearing as provided in this chapter.

(c) One (1) year from the date of revocation of a license under this section, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement and may require an examination for reinstatement.

History. Acts 1975, No. 277, § 15;
A.S.A. 1947, § 72-1815.

17-100-308. Fees.

(a) The Board of Examiners in Speech-Language Pathology and Audiology shall prescribe and publish in a manner that it deems appropriate fees in amounts determined by the board for the following purposes:

(1) Application for examination;

(2) Initial licensing;

(3) Renewal of license; and

(4) Late penalty per month.

(b) Every person to whom a license is issued pursuant to this chapter, as a condition precedent to its issuance and in addition to any application, examination, or other fee, shall pay the prescribed initial license fee. The board may by regulation provide for the waiver of all or part of such fee where the license is issued less than one hundred twenty (120) days before the date on which it will expire.

History. Acts 1975, No. 277, § 17;
A.S.A. 1947, § 72-1817; Acts 1993, No.
121, § 11.

CHAPTER 101

VETERINARIANS AND ANIMAL TECHNICIANS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. VETERINARY MEDICAL EXAMINING BOARD.
3. LICENSING.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-99-101 et seq.

Effective Dates. Acts 1975, No. 650, § 19: Mar. 28, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is a shortage of practitioners of veterinary medicine in the State of Arkansas, that the revision of the laws governing the practice of veterinary medicine, including but not limited to the certification of animal technicians, will help alleviate such shortage, and that the immediate passage of this act is necessary to provide a safeguard for the people of the State of Arkansas against dishonest, incompetent and unprincipled practitioners of veterinary medicine. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety

shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1198, § 5: Apr. 19, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is a shortage of practitioners of veterinary medicine in the State of Arkansas and that the revision of the laws governing the practice of veterinary medicine including, but not limited to the certification of veterinary technicians will help alleviate such shortage and that the immediate passage of this act is necessary to provide a safeguard for the people of the State of Arkansas against dishonest, incompetent and unprincipled practitioners of veterinary medicine. Therefore an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Statutes or regulations governing practice of veterinary medicine. 8 A.L.R.4th 223.

Veterinarians liability for malpractice. 71 A.L.R.4th 811.

What constitutes offense of cruelty to animals — modern cases. 6 A.L.R.5th 733.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.

Intentional provocation, contributory or comparative negligence, or assumption of risk as defense to action for injury by dog. 11 A.L.R.5th 127.

Medical malpractice: Who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice. 12 A.L.R.5th 1.

False or fraudulent statements or non-disclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner. 32 A.L.R.5th 57.

Am. Jur. 78 Am. Jur. 2d, Veterinarians, § 2 et seq.

C.J.S. 70 C.J.S., Phys. & S., § 6 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-101-101. Short title.
- 17-101-102. Definitions.

SECTION.

- 17-101-103. Applicability to pharmacists.

Effective Dates. Acts 1987, No. 60, § 4: Feb. 18, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is a shortage of practitioners in specialty areas of veterinary medicine in the State of Arkansas and that the revision of the laws governing the practice of veterinary medicine including but not limited to the certification of animal technicians will help alleviate such shortage and that the im-

mediate passage of this Act is necessary to provide specialty practitioners as a safeguard for the people of the State of Arkansas against dishonest, incompetent and unprincipled practitioners of veterinary medicine. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-101-101. Short title.

This chapter shall be known as the "Arkansas Veterinary Medical Practice Act".

History. Acts 1975, No. 650, § 1; A.S.A. 1947, § 72-1132; Acts 1993, No. 1198, § 1.

17-101-102. Definitions.

As used in this chapter:

(1) "Accredited or approved college of veterinary medicine" means any veterinary college or any division of a university or college that offers the degree of Doctor of Veterinary Medicine, or its equivalent, and that conforms to the standards required for accreditation or approval by the American Veterinary Medical Association;

(2) "Animal" means any animal, other than man, and includes fowl, birds, fish, and reptiles, whether wild or domestic, living or dead;

(3) "Board" means the Veterinary Medical Examining Board;

(4) "Direct supervision" or "direct personal supervision" means the veterinarian must be on-site and instantly available for consultation;

(5) "Educational Commission for Foreign Veterinary Graduates Certificate" means a certificate issued by the American Veterinary Medical Association Educational Commission for Foreign Veterinary Graduates indicating that the holder has demonstrated knowledge and skills equivalent to those possessed by a graduate of an accredited or approved college of veterinary medicine;

(6) "Immediate supervision" means observation, in the immediate vicinity, with the opportunity for the supervising veterinarian to advise or physically intervene in each procedure;

(7) "Licensed veterinarian" means a person who is validly and currently licensed to practice veterinary medicine in this state as a general practitioner or in a specialty area as the board may by regulation provide;

(8) "Person" means any individual, firm, partnership, association, joint venture, cooperative, or corporation, or any other group or combination acting in concert, and whether or not acting as principal, trustee, fiduciary, receiver, or as any kind of legal or personal representative, or

as the successor in interest, assigning agent, factor, servant, employee, director, officer, or any other representative of such a person;

(9) "Practice of veterinary medicine" means:

(A) The diagnosis, treatment, correction, change, relief, or prevention of animal disease, deformity, defect, injury, or other physical or mental condition, including the prescribing or administration of any prescription drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique on any animal, including, but not limited to, acupuncture, dentistry, animal psychology, animal chiropractic, theriogenology, surgery, including cosmetic surgery, any manual, mechanical, biological, or chemical procedure for testing for pregnancy or for correcting sterility or infertility or to tender service or recommendations with regard to any of the above;

(B) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subdivision (9)(A) of this section;

(C) The use of any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subdivision (9)(A) of this section. Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine; and

(D) Collecting blood or other samples for the purpose of diagnosing disease or other conditions. This shall not apply to:

(i) Unlicensed personnel employed by the United States Department of Agriculture or the Arkansas Livestock and Poultry Commission in disease control programs carried out under the authority of the United States Department of Agriculture or the State of Arkansas; and

(ii) Veterinary technicians or assistants acting under the direct supervision of a veterinarian as set forth in § 17-101-306(b) and (e) except for collecting blood for state or federal tests requiring that the licensed veterinarian draw the sample;

(10) "Veterinarian" means a person who has received a professional degree from a college of veterinary medicine or any person who is now licensed to practice veterinary medicine in this state;

(11) "Veterinarian-client-patient relationship" means:

(A) The veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and the need for medical treatment, and the client, that is, the owner or caretaker, has agreed to follow the instruction of the veterinarian;

(B) There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal, by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept; and

(C) The practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy;

(12) "Veterinary medicine" includes veterinary surgery, theriogenology, dentistry, acupuncture, animal psychology, chiropractic, and all other branches or specialties of veterinary practice;

(13) "Veterinary premises" means any place or unit from which the practice of veterinary medicine is conducted; and

(14) "Veterinary technician" means a person who:

(A) Has received a diploma or its equivalent from a college-level program accredited by the American Veterinary Medical Association; and

(B) Provides veterinary services under the supervision and direction of a licensed veterinarian who is responsible for the performance of that technician.

History. Acts 1975, No. 650, § 2; A.S.A. 1947, § 72-1133; Acts 1987, No. 60, § 1; 1993, No. 1198, § 1; 2001, No. 1741, § 1.

CASE NOTES

Cited: Circle J Dairy, Inc. v. A.O. Smith Harvestore Prods., Inc., 790 F.2d 694 (8th Cir. 1986).

17-101-103. Applicability to pharmacists.

This chapter does not apply to any person licensed under § 17-92-101 et seq.

History. Acts 1993, No. 1198, § 1.

Publisher's Notes. Former § 17-99-103, concerning animal technicians, was repealed by implication by Acts 1993, No.

1198. The section was derived from Acts 1975, No. 650, §§ 9, 10; A.S.A. 1947, §§ 72-1140, 72-1141. For present law, see § 17-101-306.

SUBCHAPTER 2 — VETERINARY MEDICAL EXAMINING BOARD

SECTION.

17-101-201. Creation — Members — Organization.

SECTION.

17-101-202. Secretary-treasurer.
17-101-203. Powers and duties.

Cross References. Board members not to be held personally liable for actions as board members, § 17-80-103.

Effective Dates. Acts 1987, No. 60, § 4; Feb. 18, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is a shortage of practitioners in specialty areas of veterinary medicine in the State of Arkansas and that the revision of the laws

governing the practice of veterinary medicine including but not limited to the certification of animal technicians will help alleviate such shortage and that the immediate passage of this Act is necessary to provide specialty practitioners as a safeguard for the people of the State of Arkansas against dishonest, incompetent and unprincipled practitioners of veterinary medicine. Therefore, an emergency is

hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of

1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-101-201. Creation — Members — Organization.

(a) There is created the Veterinary Medical Examining Board.

(b)(1) The board shall consist of five (5) members appointed by the Governor for terms of five (5) years.

(2) Four (4) members shall:

(A) Be licensed to practice veterinary medicine in the State of Arkansas;

(B) Be in good standing and members of the Arkansas Veterinary Medical Association;

(C) Be graduates of an accredited or approved college of veterinary medicine or holders of an Educational Commission for Foreign Veterinary Graduates Certificate;

(D) Be actively engaged in the practice of veterinary medicine in this state; and

(E) Have at least five (5) years of experience in the practice of veterinary medicine.

(3) One (1) member shall be a public member who:

(A) Shall be a resident of this state who has attained the age of majority; and

(B) Shall not be, nor shall ever have been, a veterinarian or the spouse of a veterinarian, or a person who has:

(i) Ever had any material financial interest in the provision of veterinarian services; or

(ii) Engaged in any activity directly related to the practice of veterinary medicine.

(c)(1) A board member's term of office shall expire on March 1 of the last year of the term of appointment.

(2) Each member shall serve until his or her successor has been appointed and qualified.

(d) The board shall elect from its membership a chair and a secretary-treasurer.

(e) A majority of the members of the board constitutes a quorum for the transaction of business, except that the vote of four (4) members is required for suspension or revocation of a license.

(f) The members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1975, No. 650, § 3; A.S.A. 1947, § 72-1134; Acts 1993, No. 1198, § 1; 1997, No. 250, § 173; 2001, No. 1741, § 2.

Publisher's Notes. The terms of the

members of the Veterinary Medical Examining Board are arranged so that one term expires every year.

17-101-202. Secretary-treasurer.

(a) The Secretary-treasurer of the Veterinary Medical Examining Board shall be the custodian of all fees paid by the Veterinary Medical Examining Board under the provisions of this chapter and shall deposit all fees received with the Treasurer of State for the exclusive use of the board.

(b) The secretary-treasurer shall be paid a salary in such sums as may be determined by the board.

(c) The secretary-treasurer shall execute a bond to the board, in such sums as shall be prescribed from time to time by the board, to faithfully discharge his or her duties as treasurer.

History. Acts 1975, No. 650, § 3; A.S.A. 1947, § 72-1134; Acts 1993, No. 1198, § 1.

A.C.R.C. Notes. The operation of subsection (c) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and

employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

17-101-203. Powers and duties.

The Veterinary Medical Examining Board shall have the power to:

(1) Examine and determine the qualifications and fitness of applicants for a license to practice general veterinary medicine or any specialty area thereof, and the certification of veterinary technicians in Arkansas, and issue, renew, deny, suspend, or revoke licenses or certificates, or otherwise discipline veterinarians or veterinary technicians;

(2) Subpoena witnesses and take testimony bearing on the records of applicants for permits or for licenses to practice veterinary medicine in the State of Arkansas;

(3) Establish annually a schedule of license and permit fees based on the board's financial requirements for the ensuing year;

(4) Conduct investigations into matters brought before the board and proceed on the board's own motion to a hearing or other disciplinary action;

(5) Employ personnel necessary to carry out its duties;

(6) Purchase or rent necessary office space, equipment, and supplies;

(7) Promulgate and enforce regulations necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of this chapter. The board shall make available to interested members of the public copies of this chapter and all regulations promulgated by the board;

(8) Examine and evaluate qualifications of education, skill, and experience for certification of a person as a veterinary technician and for annual registration of employment;

(9) Regulate all veterinarians in a corporate practice and prevent corporate or noncorporate holdings from being sold to, directed by, or controlled by a nonveterinarian;

(10)(A) Hold hearings on all matters properly brought before the board and, in connection thereto, administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings.

(B) The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and commission depositions; and

(11) Bring proceedings in the courts for the enforcement of this chapter or any regulations made pursuant thereto.

History. Acts 1975, No. 650, § 4; A.S.A. 1947, § 72-1135; Acts 1987, No. 60, § 2; 1993, No. 1198, § 1.

CASE NOTES

Immunity.

Where the board weighs evidence, makes factual determinations, determines sanctions, and issues written decisions, these duties are functionally comparable to the duties performed by courts, and because sufficient safeguards exist in

the Arkansas regulatory framework to control unconstitutional conduct, the board is therefore protected by quasi-judicial immunity. *Dunham v. Wadley*, 195 F.3d 1007 (8th Cir. 1999), cert. denied, 531 U.S. 819, 121 S. Ct. 60 (2000).

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-101-301. Veterinarians — Application — Qualifications.
- 17-101-302. Veterinarians — Examinations.
- 17-101-303. License without examination or license by endorsement.
- 17-101-304. Veterinarians — Temporary permit.
- 17-101-305. Veterinarians — Denial, suspension, or revocation of license.
- 17-101-306. Veterinary technician — Certification.
- 17-101-307. License required — Exemptions.

SECTION.

- 17-101-308. Veterinary technicians — Denial, suspension, or revocation of certificate.
- 17-101-309. License, certificate, and registration renewal — Reinstatement.
- 17-101-310. Continuing education required — Exemptions.
- 17-101-311. Civil penalty — Appeals and disposition of funds.
- 17-101-312. Unlawful practice — Penalties — Injunctions.
- 17-101-313. Abandoned animals.
- 17-101-314. Practicing without a license — Board penalties.

17-101-301. Veterinarians — Application — Qualifications.

(a) Any veterinarian or licensed veterinarian desiring a license to practice veterinary medicine in this state may make written application to the Veterinary Medical Examining Board showing that he or she is:

- (1) At least twenty-one (21) years of age; and
- (2) A person of moral integrity and acceptable ethical standards.

(b) The application for licensure to practice veterinary medicine in the State of Arkansas shall:

- (1) Be written;
- (2) Be signed by the applicant;
- (3) Be submitted to the board at least thirty (30) days prior to the exam;
- (4) Be accompanied by a nonrefundable application fee established by the board; and

(5) Include, but not be limited to, the information set forth below:

(A) A current photograph of the applicant;

(B) A certified transcript of the applicant's veterinary school records;

(C) A copy of the applicant's diploma from an accredited veterinary school or an affidavit from the dean of an accredited veterinary school certifying the applicant's ability to graduate if he or she has not graduated at the time of application. However, a copy of the diploma must be submitted upon availability and before the exam date;

(D) An Educational Commission on Foreign Veterinary Graduates Certificate or an equivalent program approved by the board, if applicable; and

(E)(i) A National Board Exam score and Clinical Competency Test score or the North American Veterinary Licensing Examination score, or its future equivalent, reported through the Veterinary Information Verification Agency, or its future equivalent.

(ii) The Clinical Competency Test is not required for a poultry specialty license.

(c)(1) The board by regulation may require that all applicants for licensure by examination complete a preceptorship program during their senior year under the supervision of a veterinarian licensed and in good standing in any state, territory, or district of the United States.

(2) The supervising veterinarian shall submit an affidavit to the board stating that the applicant has satisfactorily completed the preceptorship.

(d)(1) If the board finds that the applicant possesses the proper qualifications, it shall admit him or her to the next examination.

(2) If an applicant is found unqualified to take the examination or to receive a license without examination, the board shall immediately notify the applicant in writing of its findings and the grounds for same.

History. Acts 1975, No. 650, § 5; A.S.A. 1947, § 72-1136; Acts 1993, No. 1198, § 1; 1993 No. 1219, § 27; 2001, No. 1741, § 3. merly codified as § 17-101-303. Former § 17-101-301 has been renumbered as § 17-101-307.

A.C.R.C. Notes. This section was for-

17-101-302. Veterinarians — Examinations.

(a)(1) The Veterinary Medical Examining Board, at such times as it may designate, shall conduct an examination of applicants for license to practice veterinary medicine in the State of Arkansas.

(2) All examinations shall be:

(A) In writing, supplemented by oral interviews and practical examinations as the board may deem necessary; and

(B) So conducted as to ensure absolute impartiality in grading.

(b) The board hereby adopts the National Board Examination and the Clinical Competency Test, or the North American Veterinary Licensing Examination, or its future equivalent, as a basis for licensure in the State of Arkansas, along with a written examination conducted by the board.

(c) The board requires that all applicants for licensure to practice veterinary medicine in the State of Arkansas shall pass the National Board Examination and the Clinical Competency Test, or the North American Veterinary Licensing Examination, or its future equivalent, in addition to any and all state examinations, written examinations, oral interviews, and practical demonstrations as the board may request or require.

(d) All applicants are required to complete a written examination conducted by the board composed of, but not limited to:

(1) The Arkansas Veterinary Medical Practice Act, § 17-101-101 et seq.;

(2) State and federal statutes relating to prescription and controlled drugs;

(3) Ethics of veterinary medicine; and

(4) Rules and regulations of the Arkansas Livestock and Poultry Commission, the United States Department of Agriculture, Animal and Plant Health Inspection Service, and Rabies Control.

(e)(1) Poultry specialty applicants shall sit for a written examination conducted by the board on poultry veterinary medicine.

(2) A license will be issued to poultry specialty applicants with a seventy percent (70%) or better score on the state board examination and a passing score on the National Board Examination, or its equivalent.

History. Acts 1975, No. 650, § 6; A.S.A. 1947, § 72-1137; Acts 1993, No. 1198, § 1; 1995, No. 1348, § 1; 2001, No. 1741, § 4.

A.C.R.C. Notes. This section was formerly codified as § 17-101-304. Former § 17-101-302 has been renumbered as § 17-101-312.

Acts 1993, No. 1198, § 1 also provided, in part, that the provisions of this section shall not be deemed to apply to those persons who are duly licensed under the laws of this state to practice veterinary

medicine on April 19, 1993, it being the intention hereof to allow such license holders to continue in the practice of their profession and to approve and confirm all licenses so held on April 19, 1993.

Publisher's Notes. Acts 1975, No. 650, § 6, also provided, in part, that the provisions of this section should not be deemed to apply to persons licensed to practice Veterinary Medicine, under the laws of Arkansas, as of March 28, 1975, it being the intention to allow the license holders

to continue in the practice of their profession and to approve and confirm all licenses held on March 28, 1975.

17-101-303. License without examination or license by endorsement.

(a) The Veterinary Medical Examining Board, at its discretion, may issue a license without written examination to any qualified applicant who furnishes satisfactory evidence that he or she is a veterinarian and has:

(1) For the five (5) years prior to filing his or her application, been a practicing veterinarian and licensed in a state, territory, or district of the United States having license requirements at the time the applicant was first licensed which are substantially equivalent to the requirements of this chapter;

(2) Qualified as a diplomate of a specialty board approved by the American Veterinary Medical Association;

(3) Been awarded a postgraduate degree in veterinary medicine; or

(4) Been recognized as an expert in the veterinary profession.

(b) At its discretion, the board may examine, orally or practically, any person applying for a license under this section, provided that the applicant has had no disciplinary proceedings pending or completed in another jurisdiction.

History. Acts 1975, No. 650, § 7; A.S.A. 1947, § 72-1138; Acts 1993, No. 1198, § 1; 1995, No. 1348, § 2. merly codified as § 17-101-305. Former § 17-101-303 has been renumbered as § 17-101-301.

A.C.R.C. Notes. This section was for-

17-101-304. Veterinarians — Temporary permit.

(a) The Secretary of the Veterinary Medical Examining Board may issue without examination a temporary permit to practice veterinary medicine in this state to a qualified applicant for a license pending examination and provided that the temporary permit shall expire the day after the notice or results of the first examination given after the permit is issued.

(b) A temporary permit may be issued or revoked by majority vote of the board.

History. Acts 1975, No. 650, § 8; A.S.A. 1947, § 72-1139; Acts 1993, No. 1198, § 1. merly codified as § 17-101-306. Former § 17-101-304 has been renumbered as § 17-101-302.

A.C.R.C. Notes. This section was for-

17-101-305. Veterinarians — Denial, suspension, or revocation of license.

(a) Upon written complaint by any person or on the Veterinary Medical Examining Board's own motion and after notice and hearing as prescribed in the Arkansas Administrative Procedure Act, § 25-15-201

et seq., the board may deny, suspend for a definite period, or revoke the license of any veterinarian, and/or impose a civil penalty for:

(1) Fraud, misrepresentation, or deception in obtaining a license or permit;

(2) Adjudication of insanity;

(3) Use of advertising or solicitation which is false, misleading, or otherwise deemed unprofessional under regulations promulgated by the board;

(4)(A) Conviction of a felony or other crime involving moral turpitude.

(B) A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence;

(5) Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine;

(6) Having professional association with or employing any person practicing veterinary medicine unlawfully;

(7) Fraud or dishonesty in the application or reporting of any test for disease in animals;

(8) Failure to maintain professional premises and equipment in a clean and sanitary condition in compliance with regulations promulgated by the board;

(9) Dishonesty or gross negligence in the inspection of foodstuffs or in the issuance of health or inspection certificates;

(10) Cruelty to animals;

(11) Unprofessional conduct by violation of a regulation promulgated by the board under this chapter;

(12) Being unable to practice as a veterinarian with reasonable skill and safety to patients because of illness, the use of drugs, alcohol, narcotics, or chemicals, or as a result of any mental or physical condition;

(13) Revocation, suspension, surrender, or other disciplinary sanction of a license to practice veterinary medicine by another state, territory, or district of the United States on grounds other than nonpayment of a registration fee or suspension of privileges by any other regulatory agency including the failure to report any such adverse action to the board within sixty (60) days of the final action;

(14) The use, prescription, or sale of any veterinary prescription drug or the prescription of an extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship;

(15) Overtreating patients or charging for services which did not occur unless the services were contracted for in advance or for services which were not rendered or documented in the patient's records or charging for services which were not consented to by the owner of the patient or the owner's agent;

(16)(A) Failing to furnish details of a patient's medical records to another treating veterinarian, hospital, clinic, owner, or owner's agent upon proper request or waiver by the owner or owner's agent or failing to comply with any other law relating to medical records.

(B) However, X-rays prepared by the licensed veterinarian shall remain the property of the veterinarian and shall be returned upon request or as otherwise agreed between the veterinarian and client;

(17) Failure of any applicant or licensee to cooperate with the board during any investigation, if the investigation does not concern the applicant or licensee;

(18) Failure to comply with any subpoena or subpoena duces tecum from the board, or an order of the board;

(19) Failure to timely pay license or registration renewal fees as specified in § 17-101-309;

(20) Violating a probation agreement with the board or any other licensing authority of this state, another state or territory of the United States, or a federal agency; or

(21) Violating any informal consent agreement for discipline entered into by an applicant or licensee with the board or any other licensing authority of this state, another state or territory of the United States, or a federal agency.

(b) At the discretion of the board, any person whose license is suspended or revoked by the board under this section may be relicensed or reinstated by the board at any time upon written application to the board showing cause to justify relicensing or reinstatement.

(c)(1) Upon suspension or revocation of a license, the actual license certificate must be surrendered to the board within thirty (30) days of the board's order unless the action is appealed and a stay is issued.

(2) If the board prevails upon appeal or the stay is lifted, the license certificate shall be surrendered within ten (10) days of the final order of the court.

History. Acts 1975, No. 650, § 13; A.S.A. 1947, § 72-1144; Acts 1993, No. 1198, § 1; 1995, No. 1348, § 3; 2001, No. 1741, § 5.

A.C.R.C. Notes. This section was formerly codified as § 17-101-307. Former § 17-101-305 has been renumbered as § 17-101-303.

CASE NOTES

Expert Testimony.

Arkansas Veterinary Medical Examining Board's findings that a veterinarian violated subdivision (a)(5) of this section and Board Regulations 19F, 19L, and 19O, were not supported by substantial evi-

dence because these provisions required expert evidence of the standard of care, and no such evidence was presented. *Zepecki v. Ark. Veterinary Med. Examining Bd.*, 2010 Ark. App. 187, — S.W.3d — (2010).

17-101-306. Veterinary technician — Certification.

(a) No person shall assist in the practice of veterinary medicine under the direction, supervision, and responsibility of a veterinarian as a veterinary technician without first applying for and obtaining a certificate of qualification from the Veterinary Medical Examining Board as a veterinary technician and having his or her employment registered in accordance with board regulations.

(b) A veterinary technician shall perform only those acts and duties overseen by a supervising veterinarian that are within the scope of practice of the supervising veterinarian but shall not include diagnosis, prescribing medication, treatment, or surgery in the practice of animal husbandry.

(c)(1) An applicant for a certificate of qualification as a veterinary technician in this state may make written application to the board showing that he or she is:

(A) A citizen of the United States or an applicant for citizenship; and

(B) A person of moral integrity and acceptable ethical standards.

(2) The application for certification as a veterinary technician in the State of Arkansas shall be written, signed by the applicant, and submitted to the board at least thirty (30) days prior to the examination, including, but not limited to, the information set forth in this subdivision (c)(2) and shall be accompanied by a nonrefundable application fee established by the board:

(A) A current photograph of the applicant;

(B) A diploma or its equivalent from a college-level program accredited by the American Veterinary Medical Association. A photocopy of the diploma is acceptable;

(C) A certified copy of college transcripts;

(D) A National Board Examination passing score provided by the national testing agency; and

(E) A letter of recommendation signed by a licensed veterinarian and notarized.

(d) Each certified veterinary technician shall annually register his or her employment with the board, stating his or her name and current address, the name and office address of both his or her employer and the supervising licensed veterinarian, and additional information as the board deems necessary. Upon any change of employment as a veterinary technician, the registration shall be considered suspended until new employment has been obtained and the board notified in writing of the new employment.

(e) Nothing in this section shall prevent a veterinarian from utilizing the services of an employee to perform services not requiring the skill and judgment of a veterinary technician, which services are performed under the direct personal supervision of the veterinarian. Such a lay employee shall not be identified as a "veterinary technician", "animal technician", or "technician".

(f) A veterinarian licensed under the provisions of this chapter may not establish a separate office or clinic in a location other than his or her regular office and place the separate office or clinic under the control or supervision of a veterinary technician.

(g) After obtaining a degree from an accredited program in veterinary technology, and upon completing the application form for certification in Arkansas, the applicant will be issued a certificate of qualification.

(h)(1) Every veterinarian using, supervising, or employing a registered veterinary technician shall be individually responsible and liable for the performance of the acts and omissions delegated to the veterinary technician.

(2) Nothing in this subsection shall be construed to relieve the veterinary technician of any responsibility and liability for any of his or her own acts and omissions.

History. Acts 1975, No. 650, § 9; A.S.A. 1947, § 72-1140; Acts 1993, No. 1198, § 1; 1995, No. 1348, § 4. merly codified as § 17-101-308. Former § 17-101-306 has been renumbered as § 17-101-304.

A.C.R.C. Notes. This section was for-

17-101-307. License required — Exemptions.

(a) No person may practice veterinary medicine in this state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the Veterinary Medical Examining Board.

(b) This chapter shall not be construed to prohibit:

(1) Employees of the federal or state government or employees of local government who are certified by an agency approved by the board to perform euthanasia from performing their official duties;

(2) Regular students in a veterinary school or college from performing duties or actions assigned by the school or college or working under the direct personal supervision of a veterinarian licensed in the State of Arkansas;

(3) Reciprocal aid of neighbors in performing routine accepted livestock management practices without compensation;

(4) Any veterinarian licensed in any foreign jurisdiction from consulting with a licensed veterinarian;

(5) The owner of an animal, his or her consignees, and their employees from performing routine accepted livestock management practices in the care of animals belonging to the owner;

(6) A member of the faculty of a veterinary school from performing his or her regular functions or a person from lecturing or giving instruction or demonstration at a veterinary school or in connection with a continuing education course or seminar for licensed veterinarians or registered technicians;

(7) A person from engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(8)(A) Any act, task, or function performed by a veterinary technician at the direction of and under the supervision of a licensed veterinarian, when:

(i) The technician is certified by and annually registered with the board as one qualified by training or experience to function as an assistant to a veterinarian;

(ii) The act, task, or function is performed at the direction of, and under the supervision of, a licensed veterinarian in accordance with rules and regulations promulgated by the board; and

(iii) The services of the veterinary technician are limited to assisting the veterinarian in the particular fields for which the assistant has been trained, certified, and registered.

(B) Subdivision (b)(8)(A) of this section shall not limit or prevent any veterinarian from delegating to a qualified person any acts, tasks, or functions which are otherwise permitted by law but which do not include diagnosis, prescribing medication, or surgery; or

(9) Any chiropractor licensed in this state and certified by the American Veterinary Chiropractic Association from performing chiropractic upon animals so long as the chiropractic is performed under the immediate supervision of an Arkansas-licensed veterinarian.

History. Acts 1975, No. 650, § 14; A.S.A. 1947, § 72-1145; Acts 1993, No. 1198, § 1; 1995, No. 1348, § 5; 2001, No. 1741, § 6.

A.C.R.C. Notes. This section was formerly codified as § 17-101-301. Former § 17-101-307 has been renumbered as § 17-101-305.

CASE NOTES

Licensing Exemptions.

The licensing exemption for graduates of foreign veterinary schools in former § 17-99-307(b)(8) did not create a constitutionally protectable property interest for plaintiff, because it did not entitle

plaintiff to do anything; it merely exempted her from a licensing requirement. The statute did not change her legal status. *Dunham v. Wadley*, 195 F.3d 1007 (8th Cir. 1999), cert. denied, 531 U.S. 819, 121 S. Ct. 60 (2000).

17-101-308. Veterinary technicians — Denial, suspension, or revocation of certificate.

(a) The Veterinary Medical Examining Board may deny or suspend any registration or deny or revoke any certificate of qualification upon the grounds that the applicant or veterinary technician is guilty of:

(1) Soliciting patients for any practitioner of the veterinary healing arts;

(2) Soliciting or receiving any form of compensation from any person other than his or her registered employer for performing as a veterinary technician;

(3) Willfully or negligently divulging a professional secret or discussing a veterinarian's diagnosis or treatment without the express permission of the veterinarian;

(4)(A) Any offense punishable by incarceration in the Department of Correction or federal prison.

(B) A copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence;

(5) Being unable to practice as a veterinary technician with reasonable skill and safety to patients because of illness, the use of drugs, alcohol, narcotics, or chemicals, or as a result of any mental or physical condition;

(6) Fraud or misrepresentation in applying for or procuring:

(A) A certificate of qualification to perform as a veterinary technician in Arkansas; or

(B) An annual registration;

(7) Impersonating another person registered as a veterinary technician or allowing any person to use his or her certificate of qualification or registration;

(8) Aiding or abetting the practice of veterinary medicine by a person not licensed by the board;

(9) Gross negligence in the performance of duties, tasks, or functions assigned to him or her by a licensed veterinarian;

(10) Manifesting incapacity or incompetence to perform as a veterinary technician; or

(11) Conduct unbecoming a person registered as a veterinary technician or detrimental to the best interests of the public.

(b) At the discretion of the board, any person whose certificate of qualification is suspended or revoked by the board under this section may be recertified or reinstated by the board at any time upon written application to the board showing cause to justify recertification or reinstatement.

History. Acts 1975, No. 650, § 13; formerly codified as § 17-101-309. Former A.S.A. 1947, § 72-1144; Acts 1993, No. § 17-101-308 has been renumbered as 1198, § 1; 2001, No. 1741, § 7. § 17-101-306.

A.C.R.C. Notes. This section was for-

17-101-309. License, certificate, and registration renewal — Reinstatement.

(a)(1) All licenses, certificates, and registrations expire on March 31 each year and may be renewed by payment of the annual renewal fee established by regulation of the Veterinary Medical Examining Board.

(2) Not later than March 1 each year, the board shall mail a notice to each licensed veterinarian and registered veterinary technician that his or her license, registration, or certificate will expire on March 31 and shall provide a renewal application form.

(b)(1) Any person may reinstate an expired license, registration, or certificate within five (5) years of its expiration by making application to the board for renewal and paying the current renewal fee along with all delinquent renewal fees.

(2) After five (5) years have elapsed since the date of expiration, a license, registration, or certificate may not be renewed, and the holder must apply for a new license, registration, or certificate and take the required examinations.

(c) The board may provide by regulation for waiver of payment of any renewal fee of a licensed veterinarian or registered veterinary technician during any period when he or she is on active duty with any branch of the armed services of the United States for not to exceed three (3) years or for the duration of a national emergency, whichever is longer.

History. Acts 1975, No. 650, § 11; formerly codified as § 17-101-310. Former A.S.A. 1947, § 72-1142; Acts 1993, No. § 17-101-309 has been renumbered as 1198, § 1. § 17-101-308.

A.C.R.C. Notes. This section was for-

17-101-310. Continuing education required — Exemptions.

(a)(1) Each veterinarian or veterinary technician under this chapter shall be required to attend an educational program in the twelve (12) months preceding each renewal date.

(2) The postgraduate study or attendance at an institution or at an educational session approved by the Veterinary Medical Examining Board shall be considered equivalent to continuing education requirements.

(3) The board shall have the right, for good cause shown, to prescribe the type and character of postgraduate study to be done by any licensed veterinarian in order to comply with the requirements of this chapter.

(b) The board shall excuse licentiates, as a group or as individuals, from the annual educational requirements in any of the following instances:

(1) When no educational program meeting the requirements approved by the board is conducted within the state;

(2) When an affidavit is submitted to the board evidencing that the licensee, for good cause assigned, was prevented from attending an educational program at the proper time;

(3) In the event of an unusual emergency; or

(4) If that person holds an inactive license.

(c) Each veterinarian or veterinary technician must fulfill his or her annual education requirements at his or her own expense. The registration fee for his or her annual education requirements is not included in the license fee.

History. Acts 1975, No. 650, § 12; formerly codified as § 17-101-311. Former A.S.A. 1947, § 72-1143; Acts 1993, No. § 17-101-310 has been renumbered as 1198, § 1. § 17-101-309.

A.C.R.C. Notes. This section was for-

17-101-311. Civil penalty — Appeals and disposition of funds.

(a)(1) Whenever the Veterinary Medical Examining Board determines that any provision of this chapter or any regulation promulgated by the board pursuant to this chapter has been violated, the board may impose a civil penalty not to exceed five thousand dollars (\$5,000) per violation.

(2) The board may file an action in the Pulaski County Circuit Court to collect any civil penalty not paid within thirty (30) days of service of the order assessing the penalty, unless the circuit court enters a stay of the board's order.

(3) If the board prevails in the action, the defendant shall be directed to pay reasonable attorney's fees and costs incurred by the board in prosecuting the action in addition to the civil penalty.

(b) Any person aggrieved by the action of the board imposing civil penalties may appeal the decision in the manner and under the procedure prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for appeals from administrative decisions.

(c) All funds derived from civil penalties imposed by the board shall be deposited into one (1) or more depositories qualifying for the deposit of public funds. The funds shall be used by the board for administering the provisions of this chapter.

History. Acts 1987, No. 774, §§ 2-4; formerly codified as § 17-101-312. Former 1993, No. 1198, § 1; 1995, No. 1348, § 6. § 17-101-311 has been renumbered as
A.C.R.C. Notes. This section was formerly § 17-101-310.

17-101-312. Unlawful practice — Penalties — Injunctions.

(a) Any person who shall practice or attempt to practice veterinary medicine in this state without having been duly licensed in accordance with the provisions of this chapter shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be fined in any sum of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250) for each and every offense or imprisoned for a term of not less than six (6) months nor more than one (1) year, or shall be both fined and imprisoned in the discretion of the court.

(b) Each day of the unlawful practice shall constitute a separate offense.

(c) One-half ($\frac{1}{2}$) of the sums assessed as fines under this chapter shall be paid into the general fund of the county wherein it is assessed, and one-half ($\frac{1}{2}$) of the sums assessed as fines under this chapter shall be deposited with the Secretary-treasurer of the Veterinary Medical Examining Board and credited to the account of the Veterinary Medical Examining Board.

(d) The unlawful practice of veterinary medicine is declared to be a public nuisance.

(e) In addition to the penalties provided in this section, the board may institute legal proceedings to enjoin the violation of the provisions of this chapter or the rules of the board in any court of competent jurisdiction, and the court may grant a temporary or permanent injunction restraining the violation thereof.

History. Acts 1975, No. 650, § 15; formerly codified as § 17-101-302. Former A.S.A. 1947, § 72-1146; Acts 1993, No. 1198, § 1. § 17-101-312 has been renumbered as § 17-101-311.

A.C.R.C. Notes. This section was formerly

CASE NOTES

Licensing Exemptions.

The licensing exemption for graduates of foreign veterinary schools in former § 17-99-307(b)(8) did not create a constitutionally protectable property interest for plaintiff, because it did not entitle

plaintiff to do anything; it merely exempted her from a licensing requirement. The statute did not change her legal status. *Dunham v. Wadley*, 195 F.3d 1007 (8th Cir. 1999), cert. denied, 531 U.S. 819, 121 S. Ct. 60 (2000).

17-101-313. Abandoned animals.

Unless otherwise provided by contract between the veterinarian and his or her client, a veterinarian may dispose of any animal abandoned in his or her care if he or she gives notice of his or her intention to do so by certified mail sent to the last known address of the client. The veterinarian must allow the client twelve (12) days from the mailing of the certified letter in which to retrieve the animal.

History. Acts 1993, No. 1198, § 1.

17-101-314. Practicing without a license — Board penalties.

(a)(1)(A) If upon completion of an investigation the Executive Secretary of the Veterinary Medical Examining Board has probable cause to believe that a veterinarian or an unlicensed person acting as a veterinarian has violated the provisions of this chapter, he or she may issue a citation to the veterinarian or unlicensed person, as provided in this section.

(B) Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this chapter alleged to have been violated.

(C) Each citation may also contain an order of abatement fixing a reasonable time for abatement of the violation and may contain an assessment of a civil penalty not to exceed five thousand dollars (\$5,000).

(2) The citation shall be served upon the veterinarian or unlicensed individual personally or by any type of mailing requiring a return receipt.

(b) Before any citation may be issued, the executive secretary shall submit the alleged violation for review to at least one (1) member of the board.

(c)(1) Upon conclusion of the board designee's review, the designee shall prepare a finding of fact and a recommendation.

(2) If the board designee concludes that the veterinarian or unlicensed person has violated any provision of this chapter, a civil citation shall be issued to the veterinarian or unlicensed person.

(d)(1) If a veterinarian or unlicensed person desires to administratively contest a civil citation or the proposed assessment of a civil penalty, he or she shall notify within ten (10) business days after service of the citation the executive officer in writing of his or her request.

(2) Upon receipt of the request, a hearing on the matter shall be scheduled before the board.

(e) Any administrative hearing shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f) In addition to the penalties provided in this section, the board may institute legal proceedings to enjoin the violation of the provisions of this chapter or the rules of the board in any court of competent jurisdiction, and the court may grant a temporary or permanent injunction restraining the violation thereof.

History. Acts 1995, No. 1348, § 7; 2001, No. 1741, § 8.

CASE NOTES

Immunity.

Where the board weighs evidence, makes factual determinations, determines sanctions, and issues written decisions, these duties are functionally comparable to the duties performed by courts, and because sufficient safeguards exist in

the Arkansas regulatory framework to control unconstitutional conduct, the board is therefore protected by quasi-judicial immunity. *Dunham v. Wadley*, 195 F.3d 1007 (8th Cir. 1999), cert. denied, 531 U.S. 819, 121 S. Ct. 60 (2000).

CHAPTER 102 ACUPUNCTURISTS

SUBCHAPTER

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF ACUPUNCTURE AND RELATED TECHNIQUES.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-102-101. Title.
17-102-102. Definitions.
17-102-103. Disposition of funds.

SECTION.

- 17-102-104. False advertising.
17-102-105. Public health and sanitation.
17-102-106. Prosecution of violations.

Effective Dates. Acts 1999, No. 536, § 5: Mar. 11, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the Board of Acupuncture and related techniques was unable to function during 1998 because a quorum could not be assembled; that this act increases the size of the board so that the quorum requirement is more reasonable; and that until this act goes into effect, the Governor cannot appoint the additional members and thereby enable the board to resume operation.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-102-101. Title.

This chapter shall be known as the "Arkansas Acupuncture Practices Act".

History. Acts 1997, No. 816, § 1.

17-102-102. Definitions.

As used in this chapter:

(1) "Acupuncture" means the insertion, manipulation, and removal of needles from the body and the use of other modalities and procedures at specific locations on the body for the prevention, cure, or correction of a malady, illness, injury, pain, or other condition or disorder by controlling and regulating the flow and balance of energy and functioning of the patient to restore and maintain health, but acupuncture shall not be considered surgery;

(2) "Acupuncturist" means a person licensed under this chapter as a doctor of healing arts to practice acupuncture and related techniques in this state and includes the terms licensed acupuncturist, certified acupuncturist, acupuncture practitioner, and Oriental acupuncture practitioner;

(3) "Board" means the Arkansas State Board of Acupuncture and Related Techniques;

(4) "Chiropractic physician" means a person licensed under the Arkansas Chiropractic Practices Act, § 17-81-101 et seq.

(5) "Moxibustion" means the use of heat on, or above, or on acupuncture needles, at specific locations on the body for the prevention, cure, or correction of a malady, illness, injury, pain, or other condition or disorder; and

(6)(A) "Related techniques" means the distinct system of basic health care that uses all allied diagnostic and treatment techniques of acupuncture, Oriental, traditional, and modern, for the prevention or correction of a malady, illness, injury, pain, or other condition or disorder by controlling and regulating the flow and balance of energy and functioning of the patient to restore and maintain health.

(B) As used in this subdivision (6), "related techniques" include, but are not limited to, acupuncture, moxibustion or other heating modalities, cupping, magnets, cold laser, electroacupuncture including electrodermal assessment, application of cold packs, ion pumping cord, lifestyle counseling, including general eating guidelines, tui na, massage incidental to acupuncture, breathing and exercising techniques, and the recommendation of Chinese herbal medicine lawfully and commercially available in the United States. Provided, "related techniques", including, but not limited to, tui na, shall not involve manipulation, mobilization, or adjustment to the spine or extraspinal articulations.

History. Acts 1997, No. 816, § 2.

17-102-103. Disposition of funds.

(a)(1) All fees authorized by this chapter are the property of the Arkansas State Board of Acupuncture and Related Techniques and shall be provided to its treasurer to be disposed of as provided in this chapter.

(2) Any surplus in the treasury of the board at the end of the fiscal year shall remain in the treasury and may be expended in succeeding years for the purposes herein set out.

(b) All funds received by the board shall be deposited into a financial institution designated by the board and expended in the furtherance of the purposes of this chapter and the board's duties thereunder, which include, but are not limited to:

(1) The publication and distribution of the Arkansas Acupuncture Practices Act, § 17-102-101 et seq.;

(2) The publication and yearly distribution of a directory of all licensed acupuncturists;

(3) Investigations of violations of this chapter;

(4) Institution of actions to compel compliance with the provisions of this chapter; and

(5) Defense of actions brought against it as a result of its actions under the provisions of this chapter.

History. Acts 1997, No. 816, § 13.

§ 17-102-103 has been renumbered as

A.C.R.C. Notes. This section was formerly codified as § 17-102-109. Former

§ 17-102-201.

17-102-104. False advertising.

(a) A person defined in § 17-102-102(4) shall not solicit for patronage or advertise for patronage by any means whatever that are misleading, fraudulent, deceptive, or dishonest.

(b) It constitutes false advertising under this section for an acupuncturist as defined in § 17-102-102(2) to refer to himself or herself other than as a licensed acupuncturist, certified acupuncturist, acupuncture practitioner, or Oriental acupuncture practitioner.

(c) A person licensed or certified under this chapter shall not identify himself or herself as a doctor or physician.

(d) A violation of this section is grounds for disciplinary action under § 17-102-309(a)(4).

History. Acts 1997, No. 816, § 5; 2009, No. 1461, § 1.

§ 17-102-104 has been renumbered as § 17-102-202.

A.C.R.C. Notes. This section was formerly codified as § 17-102-301. Former

Amendments. The 2009 amendment rewrote the section.

17-102-105. Public health and sanitation.

(a) Acupuncturists shall use only presterilized, disposable needles in their administration of acupuncture treatments. The use of staples in the practice of acupuncture is unlawful.

(b) Sanitation practices shall include:

(1) Hands shall be washed with soap and water or other disinfectant before handling needles and between treatment of different patients; and

(2) Skin in the area of penetration shall be thoroughly swabbed with alcohol or other germicidal solution before inserting needles.

(c) No person shall be allowed to practice acupuncture and related techniques without first having passed a nationally recognized clean-needle-technique course.

History. Acts 1997, No. 816, § 23. § 17-102-105 has been renumbered as
A.C.R.C. Notes. This section was formerly codified as § 17-102-302. Former § 17-102-203.

17-102-106. Prosecution of violations.

It shall be the duty of the several prosecuting attorneys of the State of Arkansas to prosecute to final judgment every criminal violation of this chapter committed within their jurisdictions when requested and authorized by the Arkansas State Board of Acupuncture and Related Techniques.

History. Acts 1997, No. 816, § 6. § 17-102-106 has been renumbered as
A.C.R.C. Notes. This section was formerly codified as § 17-102-110. Former § 17-102-204.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF ACUPUNCTURE AND RELATED TECHNIQUES

SECTION.	SECTION.
17-102-201. Creation of board — Members — Appointment.	17-102-204. Board organization — Meetings.
17-102-202. Board members — Qualifications.	17-102-205. Board minutes — Records.
17-102-203. Board members — Liability.	17-102-206. Board duties and powers.

17-102-201. Creation of board — Members — Appointment.

(a)(1) There is created the Arkansas State Board of Acupuncture and Related Techniques. The board shall consist of five (5) persons appointed by the Governor as full members and one (1) person appointed by the Governor as an ex officio member.

(2) Three (3) full members of the board shall be qualified acupuncturists.

(3)(A) Two (2) full members shall be appointed to represent the public and shall not have practiced acupuncture and related techniques in this or any other jurisdiction nor be retired from or have any financial interest in the occupation regulated.

(B) The public members shall be subject to confirmation by the Senate.

(C) The public members shall be full voting members but shall not participate in the grading of examinations.

(4)(A) The ex officio member shall be a physician licensed pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and shall be entitled to be notified of all board meetings and to participate in the deliberations of the board.

(B) However, the ex officio member shall have no vote, shall not serve as an officer of the board, and shall not be counted to establish a quorum or a majority necessary to conduct business.

(5)(A) On a biennial basis beginning in October 2010, the board shall file a written report with the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

(B) The report shall contain a certified copy of the minutes of all board meetings as required by § 17-102-205 for the calendar years 2009 through October 2010 and thereafter covering the period of time since the last report.

(C) The report shall contain a comprehensive assessment of the board's functionality, including without limitation staff and office site adequacy and any other information as may be requested by the committees sufficient for the committees to make a recommendation to the Governor regarding whether the board should be continued or whether the board should be disbanded and abolished in accordance with a proclamation issued by the Governor.

(b)(1) The initial full members of the board shall be appointed by the Governor for staggered terms as follows:

(A) One (1) member's term shall expire after one (1) year;

(B) One (1) member's term shall expire after two (2) years; and

(C) One (1) member's term shall expire after three (3) years.

(2) Of the two (2) additional members appointed pursuant to Acts 1999, No. 536, one (1) shall be appointed for a two-year term and the other for a three-year term.

(3) The initial ex officio board member shall be appointed to a term of three (3) years.

(4) Successors shall be appointed for three-year terms.

(5) Vacancies shall be filled by appointment by the Governor for the unexpired term.

(6) Board members shall serve until their successors have been appointed and qualified.

(c) The Governor may remove any full member from the board for any reason that would justify the suspension or revocation of his or her license to practice acupuncture and related techniques.

(d) A person who is or has been in the preceding two (2) years on the faculty of a school which is subject to review by the board may not serve on the board.

History. Acts 1997, No. 816, § 7; 1999, No. 536, § 1; 2009, No. 1461, § 2. § 17-102-201 has been renumbered as § 17-102-301.

A.C.R.C. Notes. This section was formerly codified as § 17-102-103. Former **Amendments.** The 2009 amendment added (a)(5).

17-102-202. Board members — Qualifications.

(a) Each member of the Arkansas State Board of Acupuncture and Related Techniques shall be a citizen of the United States, a resident of

this state, and, before entering upon the duties of the office, shall take the oath prescribed by the Constitution for state officers and shall file it with the Secretary of State who shall thereupon issue to each person so appointed a certificate of appointment.

(b) Each full professional member also shall be a graduate of a reputable school or institute of acupuncture or Oriental medicine and be certified by the National Certification Commission for Acupuncture and Oriental Medicine.

History. Acts 1997, No. 816, § 8. § 17-102-202 has been renumbered as

A.C.R.C. Notes. This section was formerly codified as § 17-102-104. Former § 17-102-302.

17-102-203. Board members — Liability.

No member of the Arkansas State Board of Acupuncture and Related Techniques during the term of his or her office or thereafter shall be liable for damages as a result of any official act in the performance of his or her duty as such a member. Any action therefor shall upon motion be dismissed with prejudice at the cost of the plaintiff.

History. Acts 1997, No. 816, § 9. § 17-102-203 has been renumbered as

A.C.R.C. Notes. This section was formerly codified as § 17-102-105. Former § 17-102-303.

17-102-204. Board organization — Meetings.

(a) The Arkansas State Board of Acupuncture and Related Techniques shall within sixty (60) days of August 1, 1997, and every May thereafter hold a meeting and elect from its membership a president, a secretary, and a treasurer for terms set by the board.

(b)(1) It shall be the duty of the board to meet regularly one (1) time in every six (6) months.

(2) Special meetings of the board may be called at any time at the pleasure of the president or by the secretary on the request of any two (2) full members of the board.

(3) Three (3) full members shall constitute a quorum at any meeting of the board.

(c) The board shall determine by its own rules the time and manner of giving notice to members of meetings and other matters.

(d) Any action of the board shall require an affirmative vote of a majority of the full membership of the board, excluding the ex officio member.

History. Acts 1997, No. 816, § 10. § 17-102-204 has been renumbered as

A.C.R.C. Notes. This section was formerly codified as § 17-102-106. Former § 17-102-304.

17-102-205. Board minutes — Records.

(a) The Secretary of the Arkansas State Board of Acupuncture and Related Techniques shall keep a record of the minutes of its meetings and a record of all persons making application for license and the action of the Arkansas State Board of Acupuncture and Related Techniques thereon.

(b) The secretary shall also keep a record of the names, addresses, and license numbers of all acupuncturists licensed by the board, together with a record of license renewals, suspensions, and revocations.

History. Acts 1997, No. 816, § 11.

§ 17-102-205 has been renumbered as

A.C.R.C. Notes. This section was formerly codified as § 17-102-107. Former

§ 17-102-305.

17-102-206. Board duties and powers.

(a)(1) The Arkansas State Board of Acupuncture and Related Techniques is empowered to incur whatever expenses it may deem necessary or expedient in performing its functions. It may employ or engage whatever personnel, legal counsel, independent contractors, or assistants it may deem necessary or expedient therefor and fix their compensation. However, no employee of the board shall have any financial interest in the occupation of acupuncture and related techniques.

(2) All of the disbursements provided for in this section shall be out of the fees and fines collected by the board.

(b) The Arkansas State Board of Acupuncture and Related Techniques is authorized to:

(1) Make suitable bylaws for carrying out its duties under the provisions of this chapter;

(2) Sue and be sued;

(3) Have an official seal that shall bear the words "Arkansas State Board of Acupuncture and Related Techniques";

(4)(A) Provide a secretary's certificate.

(B) The certificate of the Secretary of the Arkansas State Board of Acupuncture and Related Techniques under seal shall be accepted in the courts of the state as the best evidence as to the minutes of the board and shall likewise be accepted in the courts of the state as the best evidence as to the licensure or nonlicensure of any person under the requirements of this chapter;

(5)(A) Adopt, publish, and, from time to time, revise such rules and regulations not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this chapter.

(B) Within thirty (30) days after the effective date of this act, the Arkansas State Board of Acupuncture and Related Techniques shall promulgate new rules to replace the following existing rules: Title I, Title II, Title III, Title IV, Title V, and Title VI.

(C) All proposed rules after the effective date of this act shall be approved in writing by the Arkansas State Medical Board under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., but before submission to the Subcommittee on Administrative Rules and Regulations of the Legislative Council;

(6) Keep a record of all its proceedings, receipts, and disbursements;

(7) Adopt standards for applicants wishing to take the licensing examination and conduct examinations or contract with persons or entities to conduct examinations of applicants;

(8) Grant, deny, renew, suspend, or revoke licenses to practice acupuncture and related techniques for any cause stated in this chapter. Except as otherwise provided by this chapter, the Arkansas State Board of Acupuncture and Related Techniques shall have exclusive jurisdiction to determine who shall be permitted to practice acupuncture and related techniques in the State of Arkansas; and

(9) Conduct disciplinary proceedings under this chapter.

(c)(1) In the performance of its duties, the board is empowered to administer oaths and take testimony on any matters within the board's jurisdiction and issue subpoenas and thereby compel the attendance of persons before it for the purpose of examining any facts or conditions properly pending before the board for its action.

(2) All subpoenas issued by the board shall be served in the manner prescribed by law for the service of subpoenas issuing from the courts, and all persons so served shall obey the subpoenas or be subject to the penalties provided by law for the disobedience of subpoenas issuing from the courts.

History. Acts 1997, No. 816, § 12; 2009, No. 1461, § 3.

A.C.R.C. Notes. This section was formerly codified as § 17-102-108. Former § 17-102-206 has been renumbered as § 17-102-306.

Amendments. The 2009 amendment added (b)(5)(B) and (b)(5)(C), redesignated the existing text of (b)(5) accordingly, made related changes; and made a stylistic change in (b)(9).

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-102-301. License required.
- 17-102-302. Effect on existing license.
- 17-102-303. Unlawful practice — Penalty — Injunction.
- 17-102-304. Application — Fees — Qualifications.
- 17-102-305. Examinations.
- 17-102-306. Display of license.
- 17-102-307. License renewal.

SECTION.

- 17-102-308. Continuing education.
- 17-102-309. Disciplinary actions — Grounds — Action by the board.
- 17-102-310. Exempted activities.
- 17-102-311. Exemptions.
- 17-102-312. Legend drugs.
- 17-102-313. Injections.

17-102-301. License required.

In order to safeguard life and health, any person practicing acupuncture and related techniques in the state for compensation or gratuity

itously shall be required to submit evidence that he or she is qualified to practice and licensed as provided in this chapter.

History. Acts 1997, No. 816, § 14.

§ 17-102-301 has been renumbered as

A.C.R.C. Notes. This section was formerly codified as § 17-102-201. Former

§ 17-102-104.

17-102-302. Effect on existing license.

(a) Notwithstanding the requirements set forth in § 17-102-304, any acupuncturist validly certified by the National Certification Commission for Acupuncture and Oriental Medicine as of August 1, 1997, and residing and practicing acupuncture in this state as of December 31, 1996, shall upon application to the Arkansas State Board of Acupuncture and Related Techniques be issued a license without an examination.

(b)(1)(A) Notwithstanding the requirements set forth in § 17-102-304, any acupuncturist not validly certified by the National Commission for the Certification of Acupuncturists as of August 1, 1997, but residing and practicing acupuncture in this state as of December 31, 1996, shall upon application to the board be issued a provisional license conditioned upon the acupuncturist's becoming certified by the commission within two (2) years of August 1, 1997.

(B) While the license is provisional, the acupuncturist may practice acupuncture and related techniques in this state pursuant to a scope of practice set forth in writing by the board after review of the qualifications, training, and practice experience of the acupuncturist.

(2) Upon obtaining certification and presenting it to the board, the acupuncturist shall be issued a nonprovisional license by the board.

(3) Should certification not be obtained within the two-year period, the board shall immediately revoke the provisional license.

History. Acts 1997, No. 816, § 3.

§ 17-102-302 has been renumbered as

A.C.R.C. Notes. This section was formerly codified as § 17-102-202. Former

§ 17-102-105.

17-102-303. Unlawful practice — Penalty — Injunction.

(a) Except as otherwise provided in this chapter, it shall be unlawful for any person not licensed under the provisions of this chapter:

(1) To practice or offer to practice acupuncture and related techniques; or

(2) To use any sign, card, or device to indicate that the person is an acupuncturist.

(b) Except as otherwise provided in this chapter, any person who shall attempt to practice acupuncture and related techniques as defined in this chapter without having first been licensed or otherwise permitted under the provisions of this chapter to do so, shall be deemed guilty of a misdemeanor. Upon conviction, he or she shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five

thousand dollars (\$5,000) or by imprisonment in the county jail for a period of not less than one (1) month nor more than eleven (11) months, or by both fine and imprisonment. Each day shall constitute a separate offense.

(c) The courts of this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of acupuncture and related techniques in a proceeding by the Arkansas State Board of Acupuncture and Related Techniques or any member thereof or by any citizen of this state in the county in which the alleged unlawful practice occurred or in which the defendant resides or in Pulaski County. The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this chapter, but the remedy of injunction shall be in addition to liability to criminal prosecution.

History. Acts 1997, No. 816, § 16.

A.C.R.C. Notes. This section was formerly codified as § 17-102-203.

17-102-304. Application — Fees — Qualifications.

(a)(1) No person shall be licensed to practice acupuncture and related techniques unless he or she has passed an examination and has been found to have the necessary qualifications as prescribed in the rules adopted by the Arkansas State Board of Acupuncture and Related Techniques.

(2)(A) Applications for a license to practice acupuncture and related techniques in the State of Arkansas pursuant to this chapter shall be made to the Secretary of the Arkansas State Board of Acupuncture and Related Techniques in writing on forms furnished by the board.

(B) The application shall be signed by the applicant in his or her own handwriting and acknowledged before an officer authorized to administer oaths.

(3) Before any applicant shall be eligible for an examination, the applicant shall furnish satisfactory proof to the board that he or she:

(A) Is of good moral character by filing with his or her application the affidavits of at least two (2) reputable acupuncturists who attest to his or her character;

(B) Has successfully completed not fewer than sixty (60) semester credit hours of college education, to include a minimum of thirty (30) semester credit hours in the field of science; and

(C) Has completed a program in acupuncture and related techniques and has received a certificate or diploma from an institute approved by the board as described in this section. The training received in the program shall be for a period of no fewer than four (4) academic years and shall include a minimum of eight hundred (800) hours of supervised clinical practice.

(b) Prior to approval of an institute of acupuncture and related techniques, the board shall determine that the institute meets stan-

dards of professional education. These standards shall provide that the institute:

(1) Require, as a prerequisite to graduation, a program of study of at least four (4) academic years;

(2) Meet the minimum requirements of a board-approved national accrediting body;

(3) Require participation in a carefully supervised clinical or internship program; and

(4) Confer a certificate, diploma, or degree in acupuncture and related techniques only after personal attendance in classes and clinics.

(c) To qualify to take the examination, an applicant additionally must:

(1) Be at least twenty-one (21) years of age;

(2) Be a citizen of the United States or a legal resident;

(3) Not have had a license to practice acupuncture and related techniques in any other state suspended or revoked nor have been placed on probation for any cause;

(4) Not have been convicted of a felony; and

(5) Not be a habitual user of intoxicants, drugs, or hallucinatory preparations.

(d) The board may charge the following fees:

(1) Initial application for licensing, a fee not to exceed two hundred fifty dollars (\$250);

(2) Written and practical examination not including the cost of the nationally recognized examination, a fee not to exceed three hundred fifty dollars (\$350);

(3) Biennial licensing renewal, a fee not to exceed four hundred dollars (\$400);

(4) Late renewal more than thirty (30) days, but not later than one (1) year, after expiration of a license, which late fee is in addition to any other fees, a fee not to exceed one hundred dollars (\$100);

(5) Reciprocal licensing, a fee not to exceed seven hundred fifty dollars (\$750);

(6) Annual continuing education provider registration, a fee not to exceed two hundred dollars (\$200); and

(7) Any and all fees to cover reasonable and necessary administrative expenses.

(e)(1)(A) If the applicant is approved, the applicant shall be admitted for examination.

(B) Should the applicant pass the examination, no part of the fee shall be returned, and the applicant shall be issued a license to practice acupuncture and related techniques in accordance with this chapter.

(C) Should an applicant be approved but fail to appear for the examination, no part of his or her fee shall be returned, but the applicant shall be eligible for examination at a later date.

(D) Should the approved applicant fail the examination, no part of his or her fee shall be returned, and the applicant shall be eligible for

reexamination at a later date, at the discretion of the board, upon paying an examination fee of fifty dollars (\$50.00) per failed subject up to one hundred fifty dollars (\$150).

(2) If the applicant is not approved, the application and one-half (½) of the examination fee shall be returned to the applicant with the reasons for the disapproval clearly stated.

History. Acts 1997, No. 816, § 17.

A.C.R.C. Notes. This section was formerly codified as § 17-102-204.

17-102-305. Examinations.

(a) Examinations shall be given in English and in writing and shall include the following subjects:

- (1) Anatomy and physiology;
 - (2) Pathology;
 - (3) Diagnosis;
 - (4) Hygiene, sanitation, and sterilization techniques;
 - (5) Acupuncture and related principles, practices, and techniques;
- and
- (6) Chinese herbal medicine.

(b) The Arkansas State Board of Acupuncture and Related Techniques shall hold an examination at least one (1) time each calendar year, and all applicants shall be notified in writing of the date and time of all examinations. The board may utilize a nationally recognized examination if it deems the national exam is sufficient to qualify a practitioner for licensure in this state.

(c) The board shall issue a license to every applicant whose application has been filed with and approved by the board and who has paid the required fees and who either:

- (1) Has passed the board's examination with a score on each subject of not less than seventy percent (70%); or
- (2) Has achieved a passing score on a board-approved nationally recognized examination.

History. Acts 1997, No. 816, § 18.

A.C.R.C. Notes. This section was formerly codified as § 17-102-205.

CASE NOTES

Examination Procedures.

Although the Arkansas Board of Acupuncture and Related Techniques may have had the power to administer a different exam to the acupuncturist, it chose not to do so, and since by the acupuncturist's own admission his practice was very specialized, contracting with someone

qualified to draft such a test would be difficult; there was no legal authority for the board to grant a limited license, and it was the acupuncturist's duty to take and pass the exam to obtain a license, which he failed to do and, thus, his license was invalid. *Otte v. Ark. State Bd. of Acupuncture*, 361 Ark. 279, 206 S.W.3d 225 (2005).

17-102-306. Display of license.

A person licensed under this chapter shall post his or her license in a conspicuous location in his or her place of practice.

History. Acts 1997, No. 816, § 19.

A.C.R.C. Notes. This section was formerly codified as § 17-102-206.

17-102-307. License renewal.

Each licensee shall be required to pay biennial license renewal fees and meet continuing education requirements as specified in this chapter. A licensee who fails to renew his or her license within one (1) year after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license if he or she meets the following requirements:

(1) Meets all current standards of the Arkansas State Board of Acupuncture and Related Techniques; and

(2) Takes and passes the examination and pays all fees associated therewith as if seeking a license for the first time.

History. Acts 1997, No. 816, § 20.

A.C.R.C. Notes. This section was formerly codified as § 17-102-207.

17-102-308. Continuing education.

(a) The Arkansas State Board of Acupuncture and Related Techniques shall not renew the license of any person engaged in the practice of acupuncture and related techniques unless the licensee presents to the board evidence of attendance at a board-approved educational session or sessions of not fewer than twenty-four (24) hours of continuing education within the previous biennial period.

(b) Licensees residing out of state shall comply with the continuing education requirements.

(c) The presentation of a fraudulent or forged evidence of attendance at an educational session shall be a cause for suspension or revocation of the holder's license.

History. Acts 1997, No. 816, § 21.

A.C.R.C. Notes. This section was formerly codified as § 17-102-208.

17-102-309. Disciplinary actions — Grounds — Action by the board.

(a) The following acts by an applicant for a license or by a licensed acupuncturist shall constitute grounds for which the disciplinary actions specified in subsection (b) of this section may be taken by the Arkansas State Board of Acupuncture and Related Techniques:

(1) Attempting to obtain, obtaining, or renewing a license to practice acupuncture and related techniques by bribery, fraud, or deceit;

(2) Having pled guilty or nolo contendere to, or having been found guilty of, a crime in any jurisdiction which directly relates to the practice of acupuncture and related techniques or to the ability to practice same;

(3) Advertising, practicing, or attempting to practice under a name other than one's own;

(4) Making deceptive, untrue, or fraudulent representations in the practice of acupuncture and related techniques;

(5) Becoming mentally incompetent or unfit or incompetent by reason of negligence, habits, or other causes;

(6) Becoming habitually intemperate or addicted to the use of habit-forming drugs, illegal drugs, or alcohol;

(7) Acting unprofessionally in the practice of acupuncture and related techniques;

(8) Committing fraud or deceit in filing insurance forms, documents, or information pertaining to the health or welfare of a patient; or

(9) Willfully or repeatedly violating any of the provisions of this chapter or any rule or order of the board.

(b) When the board finds any person guilty of any of the acts set forth in subsection (a) of this section, it has the sole authority to:

(1) Refuse to issue a license to the offender;

(2) Revoke or suspend the offender's license;

(3) Restrict the practice of the offender;

(4) Impose an administrative fine not to exceed five thousand dollars (\$5,000) for each count or separate offense;

(5) Reprimand the offender; or

(6) Place the offender on probation for a period of time and subject to such conditions as the board may specify.

(c) The board shall not reinstate the license of a acupuncturist or cause a license to be issued to a person it has deemed to be unqualified until such time as the board is satisfied that he or she has complied with all the terms and conditions set forth in the final order and that he or she is capable of safely engaging in the practice of acupuncture and related techniques.

(d) Disciplinary proceedings taken under this section shall be as provided in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1997, No. 816, § 22.

A.C.R.C. Notes. This section was formerly codified as § 17-102-209.

17-102-310. Exempted activities.

Nothing herein shall be construed to prohibit or to require a license hereunder with respect to the practice of medicine and surgery, chiropractic, osteopathy, dentistry, podiatry, optometry, Christian Science,

physical therapy, cosmetology, massage therapy, or any branch of the healing arts as defined by the laws of this state as now or hereafter enacted, it not being intended by this chapter to limit, restrict, enlarge, or alter the privileges and practices of any of these professions or branches of the healing arts.

History. Acts 1997, No. 816, § 15.

A.C.R.C. Notes. This section was formerly codified as § 17-102-210.

17-102-311. Exemptions.

Nothing in this chapter is intended to limit, interfere with, or prevent any other class of licensed health care professionals from practicing acupuncture and related techniques when permitted by its state licensing board. However, a chiropractic physician shall be entitled to practice acupuncture as part of chiropractic practice after completing an educational program in acupuncture from a college accredited by the Council on Chiropractic Education.

History. Acts 1997, No. 816, § 4.

A.C.R.C. Notes. This section was formerly codified as § 17-102-211.

17-102-312. Legend drugs.

An acupuncturist as defined in § 17-102-102(2) shall not prescribe, dispense, or administer a legend drug as defined under § 20-64-503.

History. Acts 2009, No. 1461, § 4.

17-102-313. Injections.

An acupuncturist as defined in § 17-102-102(2) shall not administer an injection of a substance.

History. Acts 2009, No. 1461, § 4.

CHAPTER 103

SOCIAL WORKERS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.**
- 2. ARKANSAS SOCIAL WORK LICENSING BOARD.**
- 3. LICENSING.**

RESEARCH REFERENCES

ALR. Malpractice by social worker. 58
A.L.R.4th 977.

Liability of public or private agency or
its employees to prospective adoptive par-

ents in contract or tort for failure to complete arrangement for adoption. 8 A.L.R.5th 860.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-103-101. Title.
- 17-103-102. Purpose.
- 17-103-103. Definitions.
- 17-103-104. Exemptions.
- 17-103-105. Violations.

SECTION.

- 17-103-106. Penalties and enforcement.
- 17-103-107. Privileged communications.
- 17-103-108. Privileged communications
— Not repealed.

17-103-101. Title.

This chapter shall be known and may be cited as the “Social Work Licensing Act”.

History. Acts 1999, No. 1122, § 1.

17-103-102. Purpose.

Since the profession of social work significantly affects the lives of the people of this state, it is the purpose of this chapter to protect the public by setting standards of qualification, training, and experience for those who seek to represent themselves to the public as social workers and by promoting high standards of professional performance for those engaged in the practice of social work.

History. Acts 1999, No. 1122, § 1.

17-103-103. Definitions.

As used in this chapter:

- (1) “Board” means the Arkansas Social Work Licensing Board; and
- (2) “Practice of social work” means a professional service which effects change in social conditions, human behavior, and emotional responses of individuals, couples, families, groups, and organizations. “Social work practice” can only be performed with specialized knowledge and skills related to human development, the potential for human growth, the availability of social resources, and the knowledge of social systems. The disciplined application of social work knowledge and skills includes, but is not restricted to, the following:

(A) Counseling with individuals, couples, families, and groups for purposes of assessment and enhancement of the problem-solving and coping capacities of people; and

(B) The application of social work knowledge and skills in social planning, administration, and research.

History. Acts 1999, No. 1122, § 1.

17-103-104. Exemptions.

(a) Nothing in this chapter shall be construed to prevent members of the clergy, Christian Science practitioners, and licensed professionals such as physicians, nurses, psychologists, counselors, and attorneys from doing work within the standards and ethics of their respective professions, provided that they do not hold themselves out to the public by any title or description of services as being social workers as defined under this chapter.

(b) Nothing in this chapter shall be construed to limit or prohibit the employment by licensed hospitals in this state of persons who perform services commonly within the definition of social work or practices performed by social workers, so long as the services are performed within the course of and scope of their employment as employees of the hospitals. Nor shall this chapter require any regular employee of a licensed hospital in this state to be licensed as a licensed social worker, a licensed master social worker, or a licensed certified social worker as a condition of employment by or performance of services as a social worker while employed in a licensed hospital in this state.

(c) Nothing in this chapter shall be construed as limiting the activities and services of a graduate or undergraduate student for the practice of social work from an accredited educational institution.

(d)(1) Nothing in this chapter shall be construed to require any person to be licensed as a licensed social worker who is engaged in the practice of a specialty as an employee of any agency or department of the state in the following job classifications but only if engaged in that practice as an employee of such an agency or department:

- (A) Family service worker;
- (B) Social service worker; and
- (C) Adult protective services worker.

(2) It is the intent of the General Assembly to restrict licensure to those individuals who are represented to be social workers. It is not the intent of the General Assembly to license persons such as state employees in the job classifications of social service workers and family service workers.

History. Acts 1999, No. 1122, § 1; 2009, No. 297, § 1.

Amendments. The 2009 amendment, in (d)(1), inserted “following,” deleted “of

family service worker and social service worker” following “classifications,” inserted (d)(1)(A) through (d)(1)(C), and made a minor stylistic change.

17-103-105. Violations.

The following acts shall constitute violations of this chapter:

(1) Representing oneself to be a social worker, licensed social worker, licensed master social worker, or licensed certified social worker unless licensed as such under this chapter or under titles or descriptions offering to give or giving services to individuals, groups, agencies, or corporations without a license;

(2) Entering the private independent practice of social work without being certified by the Arkansas Social Work Licensing Board;

(3) Obtaining or attempting to obtain a license or renewal thereof by bribery or fraudulent representation; and

(4) Knowingly making a false statement on any form promulgated by the board in accordance with this chapter or the rules and regulations promulgated hereunder.

History. Acts 1999, No. 1122, § 1.

17-103-106. Penalties and enforcement.

(a) Violations of this chapter shall constitute Class A misdemeanors.

(b)(1)(A) When the Arkansas Social Work Licensing Board is made aware of a possible violation of § 17-103-105, a registered letter with a return receipt requested shall be mailed to the individual in question, calling to his or her attention the pertinent aspects of the law and the rules and regulations of the board.

(B) If the individual continues the alleged illegal practice, the information shall be forwarded to the appropriate law enforcement authorities for legal action.

(2) The board shall assist the prosecuting attorney in the enforcement of this chapter.

(3) Any member of the board may present evidence of a violation to the appropriate prosecuting attorney.

History. Acts 1999, No. 1122, § 1;
2003, No. 1274, § 1.

17-103-107. Privileged communications.

No licensed certified social worker, licensed master social worker, or licensed social worker or his or her secretary, stenographer, or clerk may disclose any information he or she may have acquired from persons consulting him in his or her professional capacity to those persons except:

(1) With the written consent of the person or persons or, in the case of death or disability, of his or her own legal guardian, other person authorized to sue, or the beneficiary of an insurance policy on his or her life, health, or physical condition;

(2) That a licensed certified social worker, licensed master social worker, or licensed social worker shall not be required to treat as confidential a communication that reveals the contemplation of a crime or a harmful act;

(3) When the person is a minor under the laws of this state and the information acquired by the licensed certified social worker, licensed master social worker, or licensed social worker indicates that the minor was the victim or subject of a crime, the licensed certified social worker, licensed master social worker, or the licensed social worker may be

required to testify fully in any examination, trial, or other proceedings in which the commission of such a crime is the subject of inquiry; or

(4) When the person waives the privilege by bringing charges against the licensed certified social worker, licensed master social worker, or the licensed social worker.

History. Acts 1999, No. 1122, § 1.

17-103-108. Privileged communications — Not repealed.

Notwithstanding the provisions of this section or any other law, the privileged communications provisions codified at § 17-103-107 are not repealed.

History. Acts 1999, No. 1122, § 1.

SUBCHAPTER 2 — ARKANSAS SOCIAL WORK LICENSING BOARD

SECTION.

17-103-201. Creation — Members.

17-103-202. Organization and functions.

17-103-203. Duties generally.

SECTION.

17-103-204. Disposition of funds.

17-103-205. Fees.

Effective Dates. Acts 2009, No. 261, § 8: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2009 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the Regular Session, the delay in the effective date of this Act beyond July 1, 2009 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2009.”

17-103-201. Creation — Members.

(a) There is created the Arkansas Social Work Licensing Board.

(b) All members of the board shall be appointed by the Governor with the consent of the Senate for terms of three (3) years and shall be residents of the state and citizens of the United States.

(c) The board shall have nine (9) members, with no fewer than two (2) African American persons, and shall be composed of the following:

(1) Three (3) members shall be licensed certified social workers, two (2) members shall be licensed master social workers, and one (1) member shall be a licensed social worker. These professional members shall be appointed from the list of social workers licensed by this chapter and shall have five (5) years of full-time social work practice experience prior to appointment to the board. This experience may

consist of direct social work practice, teaching, or administration in social work;

(2) One (1) member shall be a psychiatrist certified by the American Board of Psychiatry and Neurology;

(3) One (1) member shall be a representative of the public at large; and

(4) One (1) member shall be sixty (60) years of age or older, not actively engaged in or retired from professional social work, and shall represent the elderly. This member shall be appointed from the state at large and shall be a full voting member but shall not participate in the grading of examinations. The same person may not represent both the public at large and the elderly.

(d) Members of the board may be removed from office by the Governor for cause. In case of death, resignation, or removal, the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. No member shall serve more than two (2) consecutive terms.

(e) Each member of the board may receive expense reimbursement in accordance with § 25-16-902. All reimbursements for expenses authorized by this chapter shall be paid from the Social Work Licensing Fund. No money may ever be paid from the General Revenue Fund for the administration of this chapter.

(f) In addition to the expense reimbursement mentioned in subsection (e) of this section, each member of the board may receive a stipend in accordance with § 25-16-904.

History. Acts 1999, No. 1122, § 1; **Amendments.** The 2009 amendment 2009, No. 261, § 4. added (f).

17-103-202. Organization and functions.

(a) At least two (2) regular meetings of the Arkansas Social Work Licensing Board shall be held each calendar year. At the first regular meeting every two (2) years, the board shall elect a chair and vice chair. Other regular meetings may be held at such time as the rules of the board may provide.

(b) Special called meetings may be held at the discretion of the chair or at the written request of any three (3) members of the board.

(c) Reasonable notice of all meetings shall be given in the manner prescribed by the laws of this state.

(d) A quorum of the board shall consist of four (4) members.

(e) A secretary of the board shall be elected by the board and shall hold office at the pleasure of the board.

(f) The board shall employ necessary personnel for the performance of its functions and fix the compensation of the personnel within the limits of funds available to the board.

(g) The board shall adopt a seal, which must be affixed to all certificates issued by the board.

History. Acts 1999, No. 1122, § 1.

17-103-203. Duties generally.

In addition to the duties set forth elsewhere in this chapter, the Arkansas Social Work Licensing Board shall:

(1) Establish an examination procedure, utilizing the examinations approved by the board;

(2) Establish a licensure reciprocity agreement with other states;

(3) Annually compile a list of the names and addresses of all persons licensed under this chapter to be available upon request and cost;

(4) Establish mechanisms for appeal and decisions regarding applications and granting of licenses, with such mechanisms to include provisions for judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(5) Make rules and regulations not inconsistent with law as may be necessary to regulate its proceedings;

(6) Compile an annual report;

(7) Establish rules defining unprofessional conduct and set forth and publish a code of ethics and publish standards for practice;

(8) Establish fees and publish financial records;

(9) At the time of license renewal, require each applicant to present satisfactory evidence that, in the period since the license was issued, he or she has completed the continuing education requirements specified by the board; and

(10) Establish continuing education requirements and notify the applicants for licensing of the requirements.

History. Acts 1999, No. 1122, § 1.

17-103-204. Disposition of funds.

(a) The Secretary of the Arkansas Social Work Licensing Board shall receive and account for all money derived under the provisions of this chapter and shall pay it weekly to the Treasurer of State, who shall keep the money in a separate fund to be known as the "Social Work Licensing Fund".

(b) Money may be paid out of the fund only by warrant drawn by the Chief Fiscal Officer of the State on the State Treasury, written on an itemized voucher, and approved and attested by the secretary.

(c) There shall be audits of the fund as required by law.

(d) The secretary shall give a surety bond for the faithful performance of his or her duties to the Governor in the sum of ten thousand dollars (\$10,000) or an amount recommended by the Auditor of State. The premium for this bond shall be paid out of the fund.

(e) The board may make expenditures from this fund for any purpose which is reasonable and necessary to carry out the provisions of this chapter.

History. Acts 1999, No. 1122, § 1.

17-103-205. Fees.

The Arkansas Social Work Licensing Board shall establish, charge, and collect for:

- (1) The filing of an application for a license under this chapter, a fee of not more than fifty dollars (\$50.00);
- (2) The taking of an examination, a fee as established by regulation of the board;
- (3) The original issuance of a license under this chapter, a fee of not more than fifty dollars (\$50.00);
- (4) A renewal of a license issued in accordance with this chapter, a fee of not more than eighty dollars (\$80.00);
- (5) Replacement of a license or renewal lost or destroyed, a fee of not less than twenty dollars (\$20.00); and
- (6) Endorsement of a foreign license, a fee of twenty dollars (\$20.00).

History. Acts 1999, No. 1122, § 1;
2001, No. 1481, § 1.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-103-301. License required.
- 17-103-302. Reciprocity.
- 17-103-303. Temporary licenses.
- 17-103-304. Expiration and renewal.
- 17-103-305. Renewal, revocation, suspension — Disciplinary proceedings.

SECTION.

- 17-103-306. Qualifications — Issuance.
- 17-103-307. Criminal background checks.
- 17-103-308. Licensure certificate.

17-103-301. License required.

- (a) No individual shall practice or offer to practice social work within the meaning of this chapter unless he or she is licensed, a student under the provisions of this chapter, or otherwise entitled under subsections (b) and (c) of this section.
- (b) No person may engage in the private independent practice of social work unless that person is licensed under this chapter as a licensed certified social worker.
- (c) No person may engage in social work consultation unless that person is licensed under this chapter as a licensed certified social worker.

History. Acts 1999, No. 1122, § 1.

17-103-302. Reciprocity.

The Arkansas Social Work Licensing Board may grant a license without examination to any person meeting all of the other requirements of this chapter and who at the time of application is licensed as a social worker by a similar board of another state, territory, or district

whose standards, in the opinion of the board, are not lower than those required by this chapter.

History. Acts 1999, No. 1122, § 1.

17-103-303. Temporary licenses.

(a) A social worker who comes to reside in Arkansas and does not qualify for licensing under § 17-103-302 but who is otherwise qualified for licensing may be issued a temporary license by the Arkansas Social Work Licensing Board at the appropriate level for the practice of social work for a period of up to six (6) months until the board conducts its regular licensing examinations.

(b)(1) An individual who resides in Arkansas and completes the educational requirements for licensing as a licensed social worker or licensed master social worker under § 17-103-306 may be issued a temporary license by the board at the appropriate level for the practice of social work for a period of up to one (1) year.

(2) An individual holding a temporary license under subdivision (b)(1) of this section shall sit for the examination for licensure at least two (2) times during the one (1) year of temporary licensure.

History. Acts 1999, No. 1122, § 1;
2005, No. 281, § 1.

17-103-304. Expiration and renewal.

(a) All licenses shall be effective when issued by the Arkansas Social Work Licensing Board.

(b) The licenses of a licensed social worker, licensed master social worker, and licensed certified social worker shall be valid for two (2) years after the date of issuance.

(c)(1) A license may be renewed by the payment of a renewal fee as set by the board.

(2) The board shall mail an application for renewal of a license to each person to whom a license was issued or renewed during the current year. The application shall be mailed to the most recent address of the person as it appears on the records of the board.

(3) The person shall complete the renewal application and return it to the board accompanied by the required renewal fee within not more than two (2) months after the renewal application was mailed by the board.

(4) Upon receipt of any application and fee, the board shall verify the accuracy of the application and issue to the applicant a notice of license renewal for the next two (2) years.

(d)(1) If a person fails to renew his or her license within the two-month period, the license shall lapse the last day of the month of the calendar year that is exactly two (2) years from the calendar year and month in which the license was issued.

(2) Renewal of a license which has lapsed for a period in excess of two (2) months but less than six (6) months may be effected upon submission to the board of a renewal application accompanied by a fee which shall be two (2) times the amount of the renewal fee specified.

(3) If a license is allowed to lapse for six (6) months or longer, the applicant for the license shall be considered a new applicant subject to appropriate provisions of this chapter.

(e) At the time of license renewal, each applicant shall present satisfactory evidence that in the period since the license was issued, he or she has completed the continuing education requirements as required by the board.

History. Acts 1999, No. 1122, § 1.

17-103-305. Renewal, revocation, suspension — Disciplinary proceedings.

(a) The Arkansas Social Work Licensing Board may refuse to issue or renew a license or may revoke or suspend a license issued under this chapter for any of the following causes or reasons:

- (1) Violation of a provision of this chapter;
- (2) Gross negligence in the practice of social work; or
- (3) Engaging in a course of unprofessional conduct as defined by the rules established by the board or violation of the code of ethics made and published by the board.

(b) The board shall refuse to issue or revoke the license of any person who is found guilty of or pleads guilty or nolo contendere to any offense listed in § 17-103-307(f) unless the person requests and the board grants a waiver pursuant to § 17-103-307(h).

(c) Hearings shall be conducted by the board. Decisions will be determined by a majority vote of the board. All proceedings will be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1999, No. 1122, § 1.

17-103-306. Qualifications — Issuance.

(a) The Arkansas Social Work Licensing Board shall issue a license as a licensed social worker to an applicant who qualifies as follows:

- (1) Has a baccalaureate degree in a social work program accredited by the Council on Social Work Education or received before June 17, 1986, a baccalaureate degree in a social work program from an accredited educational institution;
- (2) Has passed an examination approved by the board for this purpose and level of practice; and
- (3) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in § 17-103-307(f).

(b) The board shall issue a license as a licensed master social worker to an applicant who qualifies as follows:

(1) Has a master's degree from an accredited social work program in an accredited institution approved by the Council on Social Work Education;

(2) Has passed an examination approved by the board for this purpose and level of practice; and

(3) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in § 17-103-307(f).

(c) The board shall issue a license as a licensed certified social worker to an applicant who qualifies as follows:

(1) Has a master's degree from an accredited social work program in an accredited institution approved by the Council on Social Work Education;

(2) Has two (2) years of supervised social work experience in a clinical or nonclinical concentration by a licensed certified social worker licensed under this law beyond the master's degree;

(3) Has passed an examination approved by the board for this purpose and level of practice; and

(4) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in § 17-103-307(f).

History. Acts 1999, No. 1122, § 1.

17-103-307. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas Social Work Licensing Board shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) Except as provided in subdivision (m)(1) of this section, no person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas or of

any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;
- (9) Aggravated robbery as prohibited in § 5-12-103;
- (10) Battery in the first degree as prohibited in § 5-13-201;
- (11) Aggravated assault as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (14) Rape as prohibited in § 5-14-103;
- (15) Sexual indecency with a child as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
- (17) Incest as prohibited in § 5-26-202;
- (18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;
- (21) Permitting abuse of a minor as prohibited in § 5-27-221(a);
- (22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse as prohibited in § 5-28-103;
- (24) Theft of property as prohibited in § 5-36-103;
- (25) Theft by receiving as prohibited in § 5-36-106;
- (26) Arson as prohibited in § 5-38-301;
- (27) Burglary as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, as prohibited in § 5-64-401;
- (29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;
- (30) Stalking as prohibited in § 5-71-229;

(31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;

(32) Computer child pornography as prohibited in § 5-27-603; and

(33) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) Except as provided in subdivision (m)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding such a letter of provisional licensure has pleaded guilty or nolo contendere to or been found guilty of any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative or the person whose license is subject to revocation or his or her authorized representative. No record, file, or document shall be removed from the custody of the department.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(k) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (f) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (m)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

- (A) Capital murder as prohibited in § 5-10-101;
- (B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (C) Kidnapping as prohibited in § 5-11-102;
- (D) Rape as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;
- (F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-206;
- (G) Incest as prohibited in § 5-26-202;
- (H) Arson as prohibited in § 5-38-301;
- (I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and
- (J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1999, No. 1122, § 1; 2003, No. 1087, § 17; 2003, No. 1384, § 1; 2005, No. 1923, § 4.

A.C.R.C. Notes. As originally enacted, Acts 1999, No. 1122, § 1, also provided: "(m) By October 1, 2000, all persons licensed by the board prior to October 1, 1997, shall be required to apply for a

criminal history check in the same manner as an applicant for licensure under this section. The board shall develop and adopt a regulation that prescribes how criminal history checks for persons licensed prior to October 1, 1997, will be phased in during the period prior to October 1, 2000."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Criminal Law, Computer Crimes, 26 U. Ark. Little Rock L. Rev. 361.

Survey of Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Businesses, Background Checks, 26 U. Ark. Little Rock L. Rev. 456.

17-103-308. Licensure certificate.

(a) A licensee under this chapter involved in independent private practice with the public shall:

- (1) Display his or her license; and
- (2) Immediately notify clients if his or her license expires without renewal or is suspended or revoked.

(b) A licensee under this chapter whose license expires without renewal or is suspended or revoked shall immediately:

- (1) Notify his or her employer, employees, and partners that he or she is no longer licensed; and
- (2) Remove from public display his or her license certificate and license card.

History. Acts 2003, No. 1274, § 2.

CHAPTER 104

PERFUSIONISTS LICENSURE ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PERFUSIONISTS ADVISORY COMMITTEE.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-104-101. Title.
17-104-102. Definitions.

Effective Dates. Acts 1999, No. 888, § 24: Mar. 29, 1999. Emergency clause provided: "It is hereby found and determined by the General Assembly that the development of the perfusionist licensure procedure is essential to the public health, safety, and welfare of the people of this state, and that the immediate implementation of the provisions of this Act is necessary to establish a licensure procedure without undue delay. Therefore, an emergency is hereby declared to exist, and

this Act being necessary for the immediate preservation of the public peace, health, and safety, shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.

False or fraudulent statements or non-disclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner. 32 A.L.R.5th 57.

Liability for donee's contraction of AIDS from blood transfusion. 64 A.L.R.5th 333.

17-104-101. Title.

This chapter shall be known as the "Perfusionist Licensure Act".

History. Acts 1999, No. 888, § 1.

17-104-102. Definitions.

As used in this chapter:

- (1) "Board" means the State Board of Health;
- (2) "Committee" means the Perfusionists Advisory Committee;
- (3) "Department" means the Department of Health;

(4) "Extracorporeal circulation" means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidneys, liver, or other organs;

(5) "Licensed perfusionist" means a person licensed under this chapter;

(6) "Perfusion" means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, or respiratory systems or other organs, or a combination of those activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and supervision of a licensed physician, including:

(A) The use of extracorporeal circulation, long-term cardiopulmonary support techniques, including, but not limited to, extracorporeal carbon-dioxide removal and extracorporeal membrane oxygenation and associated therapeutic and diagnostic technologies;

(B) Counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion;

(C) The use of techniques involving blood management, advanced life support, and related functions;

(D) The administration of pharmacological and therapeutic agents or blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line for perfusion purposes as ordered by a physician;

(E) The performance and use of:

(i) Anticoagulation monitoring and analysis;

(ii) Physiologic monitoring and analysis;

(iii) Blood gas and chemistry monitoring and analysis;

(iv) Hematologic monitoring and analysis;

(v) Hypothermia;

(vi) Hyperthermia;

(vii) Hemoconcentration and hemodilution; and

(viii) Hemodialysis; and

(F) The observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures;

(7) "Perfusion protocols" means perfusion-related policies and protocols developed or approved by a licensed health care facility or a physician through collaboration with administrators, licensed perfusionists, and other health care professionals; and

(8) "Provisional licensed perfusionist" means a person provisionally licensed under this chapter.

SUBCHAPTER 2 — PERFUSIONISTS ADVISORY COMMITTEE**SECTION.**

17-104-201. Advisory committee.

17-104-202. Members.

17-104-203. Authority.

SECTION.

17-104-204. State Board of Health.

17-104-205. Department of Health.

Effective Dates. Acts 1999, No. 888, § 24: Mar. 29, 1999. Emergency clause provided: "It is hereby found and determined by the General Assembly that the development of the perfusionist licensure procedure is essential to the public health, safety, and welfare of the people of this state, and that the immediate implementation of the provisions of this Act is necessary to establish a licensure procedure without undue delay. Therefore, an emergency is hereby declared to exist, and

this Act being necessary for the immediate preservation of the public peace, health, and safety, shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-104-201. Advisory committee.

(a) There is created the Perfusionists Advisory Committee which shall consist of five (5) members with a demonstrated interest in perfusion to be appointed by the Governor, one (1) of which is recommended by the Arkansas Hospital Association.

(b) The members shall either be trained in the profession of perfusion or shall be licensed medical doctors of good professional standing. A majority of the members shall be trained in the profession of perfusion.

(c) The members shall be appointed for three-year staggered terms to be assigned by lot. The terms shall commence on July 15 of each year. In the event of a vacancy on the committee for any reason other than expiration of a regular term, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor.

(d) Members of the committee shall not be entitled to compensation for their services, but may receive expense reimbursement and a stipend not to exceed sixty dollars (\$60.00) per meeting in accordance with § 25-16-902, to be paid by the Department of Health.

History. Acts 1999, No. 888, § 3; 2001, No. 1650, § 9.

A.C.R.C. Notes. As enacted by Acts

1999, No. 888, § 3, subsection (a) originally began: "There is created effective July 1, 1999,".

17-104-202. Members.

(a) Within thirty (30) days after its appointment, the Perfusionists Advisory Committee shall organize as necessary to carry out its purposes as prescribed by this chapter.

(b)(1) At the initial organizational meeting of the committee, the members shall elect from among their number a chair, vice chair, and secretary to serve for one (1) year.

(2) Annually thereafter, officers shall be elected.

(3) A majority of the members of the committee shall constitute a quorum for the transaction of business and for the performance of such duties as the committee may prescribe.

(c)(1) Quarterly meetings of the committee may be held.

(2) Special meetings may be called by the Chair of the Perfusionists Advisory Committee or as provided by the rules of the committee.

(d)(1) The Secretary of the Perfusionists Advisory Committee shall keep full and true records of all committee proceedings and preserve all books, documents, and papers relating to the business of the committee.

(2) The records of the committee shall be open for inspection at all reasonable times.

(e) The committee shall report in writing to the State Board of Health by July 31 of each year. The report shall contain a summary of the proceedings of the committee during the preceding fiscal year, a detailed and itemized statement of all revenue and of all expenditures made by or in behalf of the committee, other information deemed necessary or useful, and any additional information which may be requested by the Governor.

History. Acts 1999, No. 888, § 4; 2005, No. 1013, § 1.

17-104-203. Authority.

(a) The Perfusionists Advisory Committee shall recommend for adoption by the State Board of Health rules, regulations, and standards on matters relating to the licensure as a perfusionist and the standards of professional conduct for the licensees.

(b) Under the authority of the State Board of Health, the committee shall assist the board in carrying out the provisions of this chapter regarding the qualifications, examination, registration, regulation, and licensure of perfusionists.

(c) Under the authority of the State Board of Health, the committee shall:

(1) Recommend to the State Board of Health:

(A) A code of ethics for perfusionists;

(B) The qualifications and fitness of applicants for licensure, renewal of licenses, and reciprocity with other states;

(C) The procedure for the revocation, suspension, or denial of a license, the probating of a license suspension, or the reprimand of a licensee for a violation of this chapter, the code of ethics, or the regulations promulgated by the State Board of Health;

(D) The categories of fees and the amount of fees that may be imposed to obtain a license; and

(E)(i) Continuing professional education requirements and clinical activities for licensed perfusionists and provisional licensed perfusionists under this chapter, the standards of which shall be at least as strict as those of the American Board of Cardiovascular Perfusion existing on January 1, 2005.

(ii) The standards shall:

(a) Establish the minimum amount of continuing education and clinical activities required to renew a license under this chapter;

(b) Develop a process to evaluate and approve continuing education courses and clinical activities;

(c) Identify the factors for the competent performance by a licensee; and

(d) Develop a procedure to assess a licensee's participation in continuing education programs and clinical activities; and

(2) Assist in other matters dealing with perfusion as the State Board of Health may direct.

History. Acts 1999, No. 888, § 5; 2005, substituted "the probating of" for "probate" in (c)(1)(C).
No. 1013, § 2; 2007, No. 827, § 140.

Amendments. The 2007 amendment

17-104-204. State Board of Health.

In accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the State Board of Health shall promulgate and implement regulations which it deems necessary to carry out the provisions of this chapter.

History. Acts 1999, No. 888, § 6.

17-104-205. Department of Health.

The Department of Health shall:

(1) Administer the provisions of this chapter;

(2) Enforce the regulations promulgated by the State Board of Health for the administration and enforcement of this chapter;

(3) Employ and prescribe the duties of employees as may be necessary to administer the provisions of this chapter;

(4) Issue initial and renewal licenses to qualified applicants who provide perfusion services; and

(5) Collect fees for licensure and accept public and private gifts, grants, and donations for the purpose of administering this chapter.

History. Acts 1999, No. 888, § 7.

1999, No. 888, § 7, subdivision (4) originally began: "Beginning July 1, 2000,".

A.C.R.C. Notes. As enacted by Acts

SUBCHAPTER 3 — LICENSING

SECTION.

17-104-301. License applicants.

17-104-302. License recipients.

SECTION.

17-104-303. License validity.

17-104-304. License qualification.

SECTION.

- 17-104-305. License requirements waived.
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17-104-307. Scope.
17-104-308. Complaints.
17-104-309. Investigation of complaints.

SECTION.

- 17-104-310. Monitoring.
17-104-311. Sanctions.
17-104-312. Violations.
17-104-313. [Repealed.]

Effective Dates. Acts 1999, No. 888, § 24: Mar. 29, 1999. Emergency clause provided: "It is hereby found and determined by the General Assembly that the development of the perfusionist licensure procedure is essential to the public health, safety, and welfare of the people of this state, and that the immediate implementation of the provisions of this Act is necessary to establish a licensure procedure without undue delay. Therefore, an emergency is hereby declared to exist, and

this Act being necessary for the immediate preservation of the public peace, health, and safety, shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-104-301. License applicants.

(a) An applicant for a perfusionist license shall submit a sworn application to the Department of Health for consideration.

(b) To qualify for the licensing examination, the applicant shall have successfully completed a perfusion education program approved by the State Board of Health.

(c) To qualify for a license, an applicant shall pass a competency examination. The examination shall be approved by the board and shall be administered to qualified applicants at least one (1) time per calendar year.

(d) No later than two (2) months after the date on which a licensing examination is administered, the board shall notify each examinee of the results of the examination.

(e) An applicant who has failed the licensing examination may request in writing that the board furnish the applicant with an analysis of the applicant's performance on the examination.

History. Acts 1999, No. 888, § 8.

17-104-302. License recipients.

(a) Any person who meets the licensing qualifications under this chapter is entitled to receive a license as a licensed perfusionist.

(b) The licensed perfusionist shall:

(1) Display the license in an appropriate and public manner or maintain an accurate copy of the perfusionist's license on file in the health care facility in which the licensed perfusionist is working; and

(2) Keep the Department of Health informed of any change of address.

(c) A license certificate issued by the department is the property of the department and shall be surrendered upon demand.

History. Acts 1999, No. 888, § 9.

17-104-303. License validity.

(a) A perfusionist's license is valid for two (2) years from the date it is issued and may be renewed.

(b) A person may renew an unexpired license by submitting proof satisfactory to the Department of Health of compliance with the continuing professional education and clinical activities requirements prescribed by the State Board of Health and by paying the required renewal fee to the board prior to the expiration date of the license.

(c) A person whose license has been expired for less than ninety (90) days may renew the license by submitting proof satisfactory to the department of compliance with the continuing professional education and clinical activities requirements prescribed by the board and by paying the required renewal fee and a penalty as established by the board.

(d) A person whose license has been expired for more than ninety (90) days but less than two (2) years may renew the license by submitting proof satisfactory to the department of compliance with the continuing professional education and clinical activities requirements prescribed by the board and by paying the required renewal fee and a penalty as established by the department.

(e) A person whose license has been expired for more than two (2) years may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining a license established under this chapter.

(f) The department may renew an expired license without reexamination if the person was originally licensed in the State of Arkansas and at the time of the request for relicensure in Arkansas is licensed in another state and has been licensed to practice in that state for the preceding two (2) years prior to the request. The fee for this license shall be determined by the board.

(g) The department shall notify each licensee in writing of the expiration date of the license at the licensee's last known address according to the records of the department.

History. Acts 1999, No. 888, § 10;
2005, No. 1013, § 3.

17-104-304. License qualification.

(a) A license for a provisional licensed perfusionist may be issued to a person who has successfully completed an approved perfusion education program and filed an application, paid the application fee, and

submitted evidence satisfactory to the Department of Health of the successful completion of the education requirements set forth in this chapter.

(b) A provisional licensed perfusionist shall be under the supervision and direction of a licensed perfusionist at all times. Regulations governing the supervision and direction of the provisionally licensed perfusionist shall not require the immediate physical presence of the supervising licensed perfusionist.

(c) A provisional perfusionist license is valid for one (1) year from the date issued and may be renewed by the same procedures established for renewal for a licensed perfusionist.

(d) Upon notification by the department that a person has failed any portion of the licensure examination, the person shall surrender the provisional perfusionist license to the department.

History. Acts 1999, No. 888, § 11.

17-104-305. License requirements waived.

(a) Under the authority of the State Board of Health, the Department of Health may waive the examination requirement for an applicant who at the time of the application:

(1) Is licensed or certified by another state if the requirements of that state for the license or certificate are the substantial equivalent of the requirements of this chapter as determined by the board; or

(2) Holds a current certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion, or its successor, prior to January 1, 2000.

(b) The applicant shall pay to the department the application fee.

History. Acts 1999, No. 888, § 12.

17-104-306. Unlicensed practice.

(a) A person shall not engage or offer to engage in perfusion for compensation or use the title or represent or imply that the person has the title of "licensed perfusionist" or "provisional licensed perfusionist" or use the letters "LP" or "PLP" and shall not use any facsimile of these titles in any manner to indicate or imply that the person is a licensed perfusionist or provisional licensed perfusionist, unless the person holds that license issued under this chapter.

(b) A person shall not use the title or represent or imply that the person has the title of "certified clinical perfusionist" or use the letters "CCP" and shall not use any facsimile of those titles in any manner to indicate or imply that the person is a certified clinical perfusionist by the American Board of Cardiovascular Perfusion, unless the person holds a certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion.

(c) A violation of the provisions of this chapter is a Class C misdemeanor.

History. Acts 1999, No. 888, § 13.

17-104-307. Scope.

This chapter does not apply to:

(1) A person licensed by another health professional licensing board if:

(A) The person does not represent to the public, directly or indirectly, that the person is licensed under this chapter; and

(B) The person confines the person's acts or practice to the scope of practice authorized by the other health professional licensing law;

(2) A student enrolled in an accredited perfusion education program if perfusion services performed by the student are:

(A) An integral part of the student's course of study; and

(B) Performed under the direct supervision of a licensed perfusionist assigned to supervise the student and who is on duty and immediately available in the assigned patient care area; and

(3) The practice of any qualified perfusionist employed by the United States Government while in the discharge of official duties.

History. Acts 1999, No. 888, § 14.

17-104-308. Complaints.

(a) The Department of Health shall keep an information file containing each complaint filed with the department. The information file shall be kept current and contain a record for each complaint of:

(1) All persons contacted in relation to the complaint;

(2) A summary of findings made at each step of the complaint process;

(3) An explanation of the legal basis and reason for a dismissed complaint; and

(4) Other relevant information.

(b) If a written complaint is filed with the department, the department shall notify the parties of the status of the complaint, unless the notice would jeopardize an undercover investigation.

(c) The State Board of Health shall adopt a form to standardize information concerning complaints made to the department and shall prescribe the information to be provided to a person when a complaint has been filed.

History. Acts 1999, No. 888, § 15.

17-104-309. Investigation of complaints.

(a) The State Board of Health shall adopt regulations concerning the investigation of a complaint filed with the Department of Health. The regulations adopted under this section shall:

(1) Ensure that complaints are not dismissed without appropriate consideration; and

(2) Ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint.

(b) The department shall dispose of all complaints in a timely manner.

History. Acts 1999, No. 888, § 16.

17-104-310. Monitoring.

The State Board of Health shall develop a system for monitoring licensees' compliance with this chapter. Regulations adopted under this section shall include procedures for monitoring licensees to determine that the licensee performs the acts required by the Department of Health and to identify and monitor licensees who represent a risk to the public.

History. Acts 1999, No. 888, § 17.

17-104-311. Sanctions.

(a) The Department of Health shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee upon a determination of:

(1) Any violation of this chapter; or

(2) Any violation of a regulation or code of ethics adopted by the State Board of Health.

(b) If a license suspension is probated, the department may require the licensee to:

(1) Report on a regular basis to the department on matters that are the basis of the probation;

(2) Limit practice to the areas prescribed by the department; or

(3) Continue the person's professional education until the licensee reaches a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) Upon a determination by the department to suspend or revoke a person's license, the licensee is entitled to a hearing before the board. The board shall prescribe procedures by which all decisions to suspend or revoke a license are appealable to the board.

(d) The board shall adopt a schedule of sanctions for violations under this chapter.

(e) A member of the board or hearing examiner may not communicate with a party to a proceeding pending before the department or with a party's representative, unless notice and an opportunity to participate are given to each party to the proceedings.

History. Acts 1999, No. 888, § 18.

17-104-312. Violations.

The Department of Health shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee upon a determination of:

- (1) Any violation of this chapter;
- (2) Any violation of a rule or code of ethics adopted by the State Board of Health; or
- (3) Unprofessional conduct, which includes, but is not limited to:
 - (A) Incompetence or gross negligence in carrying out usual perfusion functions;
 - (B) A conviction of practicing perfusion without a license or a provisional license;
 - (C) The use of advertising relating to perfusion in a manner which violates state law;
 - (D) Procuring a license or provisional license by fraud, misrepresentation, or mistake;
 - (E) Making or giving any false statement or information in connection with the application for the license or provisional license;
 - (F) A plea of guilty, nolo contendere, or a finding of guilt of a felony or any offense substantially related to the qualifications, functions, or duties of a perfusionist, in which event the record shall be conclusive evidence; or
 - (G) Impersonating an applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

History. Acts 1999, No. 888, § 19.

17-104-313. [Repealed.]

Publisher's Notes. This section, concerning exceptions to license requirements, was repealed by Acts 2005, No.

1013, § 4. The section was derived from Acts 1999, No. 888, § 20.

CHAPTER 105

PHYSICIAN ASSISTANTS

SECTION.

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SECTION.

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- 17-105-119. "Good Samaritan" provision.
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- 17-105-122. Physician assistant patient care orders.
 17-105-123. Medical malpractice — Professional and legal liability for actions.

RESEARCH REFERENCES

ALR. Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner. 72 A.L.R.4th 1148.

Rights as to notice and hearing in proceeding to revoke or suspend license to

practice medicine. 10 A.L.R.5th 1.

False or fraudulent statements or non-disclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner. 32 A.L.R.5th 57.

Allowance of punitive damages in medical malpractice actions. 35 A.L.R.5th 145.

17-105-101. Definitions.

As used in this chapter:

(1) "Board" means the Arkansas State Medical Board;

(2)(A) "Physician assistant" means a person who has:

(i) Graduated from a physician assistant or surgeon assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs; and

(ii) Passed the certifying examination administered by the National Commission on Certification of Physician Assistants.

(B) The physician assistant is a dependent medical practitioner who:

(i) Provides health care services under the supervision of a physician; and

(ii) Works under a physician-drafted protocol approved by the board, which describes how the physician assistant and the physician will work together and any practice guidelines required by the supervising physician;

(3) "Supervision" means overseeing the activities of and accepting responsibility for the medical services rendered by a physician assistant. The constant physical presence of the supervising physician is not required so long as the supervising physician and physician assistant are or can be easily in contact with one another by radio, telephone, electronic, or other telecommunication device. Supervision of each

physician assistant by a physician or physicians shall be continuous; and

(4) "Supervising physician" means a doctor of medicine or doctor of osteopathy licensed by the board who supervises physician assistants.

History. Acts 1999, No. 851, § 1.

17-105-102. Qualifications for licensure.

(a) Except as otherwise provided in this chapter, an individual must be licensed by the Arkansas State Medical Board before the individual may practice as a physician assistant.

(b) The board may grant a license as a physician assistant to an applicant who:

(1) Submits an application on forms approved by the board;

(2) Pays the appropriate fees as determined by the board;

(3) Has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Committee on Allied Health Education and Accreditation or by its successor agency and has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(4) Certifies that he or she is mentally and physically able to engage safely in practice as a physician assistant;

(5) Has no licensure, certification, or registration as a physician assistant under current discipline, revocation, suspension, or probation for cause resulting from the applicant's practice as a physician assistant, unless the board considers the condition and agrees to licensure;

(6) Is of good moral character;

(7) Submits to the board any other information the board deems necessary to evaluate the applicant's qualifications;

(8) Has been approved by the board;

(9) Is at least twenty-one (21) years of age; and

(10) After July 1, 1999, has at least a bachelor's degree in some field of study from a regionally accredited college or university, unless the applicant has:

(A) Prior service as a military corpsman and is a graduate of a physician assistant education program recognized by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs or the applicant is currently certified by the National Commission on Certification of Physician Assistants;

(B) Was serving as a physician assistant in a federal facility located in the State of Arkansas on or after July 1, 1999, and who is a graduate of a physician assistant education program recognized by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs;

(C) Was licensed in good standing on June 30, 1999, by the board;
or

(D) Was enrolled on or before July 1, 1999, in a physician assistant program recognized by the Commission on Accreditation of Allied Health Education Programs.

History. Acts 1999, No. 851, § 2.

17-105-103. Graduate license — Temporary license.

(a) The Arkansas State Medical Board may grant a graduate license to an applicant who meets the qualifications for licensure, except that the applicant has not yet taken the national certifying examination or the applicant has taken the national certifying examination and is awaiting the results.

(b) A graduate license is valid:

(1) For one (1) year from the date of issuance;

(2) Until the results of an applicant's examination are available; or

(3) Until the board makes a final decision on the applicant's request for licensure,

whichever comes first.

(c) The board may extend a graduate license upon a majority vote of the board members for a period not to exceed one (1) year. Under no circumstances may the board grant more than one (1) extension of a graduate license.

(d) A temporary license may be granted to an applicant who meets all the qualifications for licensure but is awaiting the next scheduled meeting of the board.

History. Acts 1999, No. 851, § 3.

17-105-104. Inactive license.

Any physician assistant who notifies the Arkansas State Medical Board in writing on forms prescribed by the board may elect to place his or her license on an inactive status. A physician assistant with an inactive license shall be excused from payment of renewal fees and shall not practice as a physician assistant. Any licensee who engages in practice while his or her license is lapsed or on inactive status shall be considered to be practicing without a license, which shall be grounds for discipline under § 17-105-113. A physician assistant requesting restoration from inactive status shall be required to pay the current renewal fee and shall be required to meet the criteria for renewal as specified in § 17-105-105.

History. Acts 1999, No. 851, § 4.

17-105-105. Renewal.

Upon notification from the Arkansas State Medical Board, each person who holds a license as a physician assistant in this state shall renew the license by:

- (1) Submitting the appropriate fee as determined by the board;
- (2) Completing the appropriate forms; and
- (3) Meeting any other requirements set forth by the board.

History. Acts 1999, No. 851, § 5.

17-105-106. Exemption from licensure.

Nothing in this chapter shall be construed to require licensure of:

- (1) A physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the Committee on Allied Health Education and Accreditation or by its successor agency;
- (2) A physician assistant employed in the service of the federal government while performing duties incident to that employment;
- (3) Technicians, other assistants, or employees of physicians who perform delegated tasks in the office of a physician but who are not rendering services as a physician assistant or identifying themselves as a physician assistant;
- (4) A physician assistant in the service of the State Military Department or the Arkansas National Guard, or both. These physician assistants shall be allowed to perform their physician assistant practice duties, including prescribing, in the same manner as they would if federalized by the United States Government; or
- (5) A physician assistant who is temporarily transiting through the State of Arkansas while caring for a patient, provided that he or she remains under the supervision of his or her supervising physician.

History. Acts 1999, No. 851, § 6.

17-105-107. Scope of authority — Delegatory authority — Agent of supervising physician.

(a) Physician assistants provide health care services with physician supervision. The supervising physician shall be identified on all prescriptions and orders. Physician assistants may perform those duties and responsibilities, including the prescribing, ordering, and administering drugs and medical devices, that are delegated by their supervising physicians.

(b) Physician assistants shall be considered the agents of their supervising physicians in the performance of all practice-related activities, including, but not limited to, the ordering of diagnostic, therapeutic, and other medical services.

(c) Physician assistants may perform health care services in any setting authorized by the supervising physician in accordance with any applicable facility policy.

(d) Nothing in this chapter shall be construed to authorize a physician assistant to:

- (1) Examine the human eye or visual system for the purpose of prescribing glasses or contact lenses or the determination of the refractive power for surgical procedures;

(2) Adapt, fill, duplicate, modify, supply, or sell contact lenses or prescription eye glasses; or

(3) Prescribe, direct the use of, or use any optical device in connection with ocular exercises, vision training, or orthoptics.

History. Acts 1999, No. 851, § 7.

17-105-108. Prescriptive authority.

(a) Physicians supervising physician assistants may delegate prescriptive authority to physician assistants to include prescribing, ordering, and administering Schedule III-V controlled substances as described in the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, and 21 C.F.R. Part 1300, all legend drugs, and all nonschedule prescription medications and medical devices. All prescriptions and orders issued by a physician assistant shall also identify his or her supervising physician.

(b) At no time shall a physician assistant's level of prescriptive authority exceed that of the supervising physician.

(c) Physician assistants who prescribe controlled substances must register with the Drug Enforcement Administration as part of the Drug Enforcement Administration's Mid-Level Practitioner Registry, 21 C.F.R. Part 1300, 58 FR 31171-31175, and the Controlled Substances Act.

History. Acts 1999, No. 851, § 8.

U.S. Code. The Controlled Substances

Act, referred to in this section, is codified primarily as 21 U.S.C. § 801 et seq.

17-105-109. Supervision.

(a) Supervision of physician assistants shall be continuous but shall not be construed as necessarily requiring the physical presence of the supervising physician at the time and place that the services are rendered.

(b) It is the obligation of each team of physicians and physician assistants to ensure that:

(1) The physician assistant's scope of practice is identified;

(2) The delegation of medical task is appropriate to the physician assistant's level of competence;

(3) The relationship and access to the supervising physician is defined; and

(4) A process of evaluation of the physician assistant's performance is established.

(c) The physician assistant and supervising physician may designate back-up physicians who are agreeable to supervise the physician assistant during the absence of the supervising physician.

History. Acts 1999, No. 851, § 9.

17-105-110. Supervising physician.

A physician desiring to supervise a physician assistant must:

- (1) Be licensed in this state;
- (2) Notify the Arkansas State Medical Board of his or her intent to supervise a physician assistant; and
- (3) Submit a statement to the board that he or she will exercise supervision over the physician assistant in accordance with any rules adopted by the board.

History. Acts 1999, No. 851, § 10.

17-105-111. Notification of intent to practice.

(a) Prior to initiating practice, a physician assistant licensed in this state must submit on forms approved by the Arkansas State Medical Board notification of such an intent. The notification shall include:

- (1) The name, business address, e-mail address, and telephone number of the supervising physician; and
- (2) The name, business address, and telephone number of the physician assistant.

(b) A physician assistant shall notify the board of any changes or additions in supervising physicians within ten (10) calendar days.

History. Acts 1999, No. 851, § 11.

17-105-112. Exclusions of limitations of employment.

Nothing in this chapter shall be construed to limit the employment arrangement of a physician assistant licensed under this chapter.

History. Acts 1999, No. 851, § 12.

17-105-113. Violation.

Following the exercise of due process, the Arkansas State Medical Board may discipline any physician assistant who:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license;
- (2) Fraudulently or deceptively uses a license;
- (3) Violates any provision of this chapter or any regulations adopted by the board pertaining to this chapter;
- (4) Is convicted of a felony;
- (5) Is a habitual user of intoxicants or drugs to such an extent that he or she is unable to safely perform as a physician assistant;
- (6) Has been adjudicated as mentally incompetent or has a mental condition that renders him or her unable to safely perform as a physician assistant;
- (7) Has committed an act of moral turpitude; or
- (8) Represents himself or herself as a physician.

History. Acts 1999, No. 851, § 13.

17-105-114. Disciplinary authority.

Upon finding that a physician assistant has committed any offense described in § 17-105-113, the Arkansas State Medical Board may:

- (1) Refuse to grant a license;
- (2) Administer a public or private reprimand;
- (3) Revoke, suspend, limit, or otherwise restrict a license;
- (4) Require a physician assistant to submit to the care, counseling, or treatment of a physician or physicians designated by the board;
- (5) Suspend enforcement of its finding thereof and place the physician assistant on probation with the right to vacate the probationary order for noncompliance; or
- (6) Restore or reissue, at its discretion, a license and impose any disciplinary or corrective measure which it may have imposed.

History. Acts 1999, No. 851, § 14.

17-105-115. Title and practice protection.

(a) Any person not licensed under this chapter is guilty of a Class A misdemeanor and is subject to penalties applicable to the unlicensed practice of medicine if he or she:

- (1) Holds himself or herself out as a physician assistant;
- (2) Uses any combination or abbreviation of the term “physician assistant” to indicate or imply that he or she is a physician assistant; or
- (3) Acts as a physician assistant.

(b) An unlicensed physician shall not be permitted to use the title of physician assistant or to practice as a physician assistant unless he or she fulfills the requirements of this chapter.

History. Acts 1999, No. 851, § 15.

17-105-116. Identification requirements.

Physician assistants licensed under this chapter shall keep their license available for inspection at their primary place of business and when engaged in their professional activities shall wear a name tag identifying themselves as a physician assistant.

History. Acts 1999, No. 851, § 16.

17-105-117. Rule-making authority.

(a) The Arkansas State Medical Board shall promulgate regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., that are reasonable and necessary for the performance of the various duties imposed upon the board by this chapter, including, but not limited to:

- (1) Establishing license renewal dates; and

- (2) Setting the level of liability coverage.
- (b) The board may levy the following fees:
 - (1) Physician assistant application for licensure fee, eighty dollars (\$80.00);
 - (2) Initial application fee for the physician employer, fifty dollars (\$50.00);
 - (3) Physician assistant annual relicensure fee, fifty dollars (\$50.00);
 - (4) Physician assistant delinquent licensure fee, twenty-five dollars (\$25.00) for each delinquent year or part thereof;
 - (5) Physician assistant application for graduate or temporary licensure fee, ten dollars (\$10.00); and
 - (6) Physician assistant one-time extension graduate licensure fee, forty dollars (\$40.00).
- (c) The board may appoint a physician assistant advisory committee to assist in the administration of this chapter.

History. Acts 1999, No. 851, § 17.

17-105-118. Regulation by Arkansas State Medical Board.

The Arkansas State Medical Board shall administer the provisions of this chapter under such procedures as it considers advisable and may adopt rules that are reasonable and necessary to implement the provisions of this chapter. Further, it is the intent of the General Assembly that the board on behalf of the General Assembly shall make rules clarifying any ambiguities or related matters concerning this chapter, which may not have been specifically addressed.

History. Acts 1999, No. 851, § 18.

17-105-119. “Good Samaritan” provision.

Physician assistants shall be subject to the “Good Samaritan” provisions embodied in § 17-95-101.

History. Acts 1999, No. 851, § 19.

17-105-120. Retired physician assistants.

(a) Retired physician assistants may practice their medical services under the supervision of a licensed physician and shall be subject to the same provisions as a retired physician or surgeon would be pursuant to § 17-95-106.

(b) Retired physician assistants practicing under this provision must continue to be licensed by the Arkansas State Medical Board and must practice their medical skills only under the supervision of a licensed physician.

History. Acts 1999, No. 851, § 20.

17-105-121. Physician assistant employment — Uniform Classification Plan.

(a) The Office of Personnel Management of the Division of Administrative Services of the Department of Finance and Administration shall establish and maintain a position classification of physician assistant. The initial position classification shall mirror the Veterans Health Administration Directive 10-95-020 of March 3, 1995, and the United States Department of Veterans Affairs regulation as embodied in:

- (1) MP-5, Part II, Chapter 2, Change 2, Appendix H; and
- (2) MP-5, Part II, Chapter 5, Change 5.

(b) Modifications or changes in the future to the state position classification of physician assistant shall only be made based upon the concurrence of the Physician Assistant Advisory Committee.

History. Acts 1999, No. 851, § 21.

17-105-122. Physician assistant patient care orders.

(a) Patient care orders generated by a physician assistant shall be construed as having the same medical, health, and legal force and effect as if the orders were generated by their supervising physician, provided that the supervising physician's name is identified in the patient care order.

(b) The orders shall be complied with and carried out as if the orders had been issued by the physician assistant's supervising physician.

History. Acts 1999, No. 851, § 22.

17-105-123. Medical malpractice — Professional and legal liability for actions.

Physician assistants shall be covered under the provisions regarding medical malpractice and legal liability as such applies to their supervising physician as embodied in §§ 16-114-201 — 16-114-203 and 16-114-205 — 16-114-209.

History. Acts 1999, No. 851, § 23.

CHAPTER 106**CONSUMER-PATIENT RADIATION HEALTH AND SAFETY****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. REGULATION OF RADIOLOGIST ASSISTANTS AND RADIOLOGY PRACTITIONER ASSISTANTS.

RESEARCH REFERENCES

ALR. Applicability of doctrine of strict liability in tort to injury resulting from x-ray radiation. 16 A.L.R.4th 1300.

Tort liability for non-medical radiological harm. 73 A.L.R.4th 582.

SUBCHAPTER 1 — GENERAL PROVISIONS

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- 17-106-101. Findings.
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17-106-101. Findings.

The General Assembly hereby finds and declares that the citizens of the State of Arkansas are entitled to the maximum protection practicable from the harmful effects of excessive and improper exposure to ionizing radiation and that the protection will be increased by requiring appropriate education of persons using radioactive materials or operating medical equipment emitting or detecting ionizing radiation upon human beings.

History. Acts 1999, No. 1071, § 1.

17-106-102. Title.

This chapter may be cited as the “Consumer-Patient Radiation Health and Safety Act”.

History. Acts 1999, No. 1071, § 2.

17-106-103. Definitions.

As used in this chapter:

- (1) “Board” means the State Board of Health;
- (2) “Committee” means the Medical Ionizing Radiation Licensure Committee;
- (3) “Consumer” means a person who is a resident of this state but who is not a licensed practitioner or radiologic technologist or licensed technologist or limited licensed technologist under this chapter;
- (4) “Department” means the Department of Health;
- (5) “Direct supervision”, pertaining to students, means responsibility for, and control of, radiation safety, protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic or

therapeutic purposes, with the parameters that are outlined by educational accreditation agencies that are recognized by the board;

(6) "Ionizing radiation" means gamma rays, X rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear particles;

(7) "License" means a certificate issued by the board authorizing the licensee to use radioactive materials or medical equipment emitting or detecting ionizing radiation for human diagnostic or therapeutic purposes in accordance with this chapter;

(8) "Licensed practitioner" means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathy, or optometry in this state;

(9) "Licensed technologist" means a person other than a licensed practitioner who administers radioactive substances or uses medical equipment emitting or detecting ionizing radiation for human diagnostic or therapeutic purposes under the supervision of a licensed practitioner and who is "grandfathered" under this chapter;

(10) "Limited license" means an authorization to perform radiologic procedures under the supervision of a licensed practitioner that are limited to specific parts of the human body, specifically of the chest and skeletal structures, or limited to specific procedures, or both;

(11) "Limited licensed technologist" means a person, other than a licensed practitioner, radiologic technologist, or licensed technologist, who:

(A) While under the supervision of a licensed practitioner, operates medical equipment emitting ionizing radiation for diagnostic purposes on human beings that are limited to specific body parts; and

(B) Has successfully passed a limited scope examination deemed appropriate by the board;

(12) "Medical dosimetrist" means a person who is certified or eligible for certification by the Medical Dosimetry Certification Board;

(13) "Nuclear medicine technologist" means a person, other than a licensed practitioner, who performs therapeutic, in vivo, imaging, and measurement procedures, prepares radiopharmaceuticals, and administers diagnostic doses of radiopharmaceuticals to human beings while under supervision of a licensed practitioner who is licensed as required to possess and use radioactive materials;

(14) "Radiation health/medical physicist" means a person who is certified or eligible for certification in radiologic physics by the American Board of Radiology, the American Board of Health Physics, the American Board of Medical Physics, or the American Board of Science in Nuclear Medicine;

(15) "Radiation practitioner" means a licensed practitioner who has completed a residency in radiology, nuclear medicine, or radiation oncology, or is certified by the American Board of Radiology, the American Osteopathic Board of Radiology, or the American Board of Nuclear Medicine or its equivalent;

(16) "Radiation therapist" means a person, other than a licensed practitioner or nuclear medicine technologist, who applies radiation to

humans for therapeutic purposes under the supervision of a licensed practitioner;

(17) "Radiologic technologist" means a person, other than a licensed practitioner, licensed under this chapter who administers radioactive substances or uses medical equipment emitting or detecting ionizing radiation for human diagnostic or therapeutic purposes under the supervision of a licensed practitioner and holds a national certification obtained through education and examination;

(18) "Radiologic technology" is the science of using a radioactive substance or medical equipment emitting or detecting ionizing radiation of humans for diagnostic or therapeutic purposes; and

(19) "Temporary license" means a certificate issued by the committee authorizing the applicant to use radioactive materials or medical equipment emitting or detecting ionizing radiation for human diagnostic or therapeutic purposes when licensure or relicensure is pending before the committee and when the issuance may be justified by special circumstances as determined by the committee.

History. Acts 1999, No. 1071, § 3;
2003, No. 1395, §§ 1-3.

17-106-104. Medical Ionizing Radiation Licensure Committee.

(a)(1) The Medical Ionizing Radiation Licensure Committee shall be an advisory committee to the State Board of Health and shall consist of ten (10) members, as follows:

(A) Nine (9) members to be appointed by the Governor; and

(B) One (1) member shall be the Director of the Department of Health or his or her designee.

(2) The nine (9) members appointed by the Governor shall be residents of the State of Arkansas and shall have been employed in their fields for five (5) years preceding their appointment.

(3) Among the committee members shall be two (2) radiologic technologists, one (1) nuclear medicine technologist, one (1) radiation therapist, two (2) radiation practitioners, one (1) licensed practitioner, one (1) medical physicist, and one (1) consumer. The radiologic technologists appointed to the committee must be eligible for licensure under this chapter.

(b) The members shall be appointed for three-year staggered terms to be assigned by lot. Committee members shall serve until replaced. The terms shall commence on July 15 of each year. Committee members are limited to serving two (2) consecutive terms. In the event of a vacancy on the committee for any reason, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor.

(c) Members of the committee shall not be entitled to compensation for their services but may receive expense reimbursement in accordance with § 25-16-902, to be paid by the Department of Health.

(d) The consumer member appointed to the committee shall have no association or relationship with a licensed practitioner, radiologic

technologist, licensed technologist, or limited licensed technologist which would prevent or in any way hinder the consumer in representing the interest of the public.

(e) Within ninety (90) days of appointment, the committee shall hold a meeting and elect from its membership a chair for a term set by the committee. The secretary of the committee shall be the Director of the Department of Health or his or her designee.

(f) The committee shall meet at least quarterly.

(g) Special meetings of the committee may be called at any time at the pleasure of the board or pursuant to the bylaws of the committee.

(h) A majority of the members of the committee shall constitute a quorum. No action may be taken by the board except by affirmative vote of the majority of those present.

History. Acts 1999, No. 1071, § 4.

17-106-105. Duties and powers.

(a)(1) The State Board of Health is authorized to:

(A)(i) Incur whatever expenses it may deem necessary or expedient in performing its duties under the provisions of this chapter.

(ii) It may employ or engage whatever personnel, legal counsel, independent contractors, or assistants it may deem necessary or expedient and fix their compensation;

(B) Adopt standards for applicants wishing to take the licensing examination;

(C) Recognize and license emerging modalities in radiological procedures; and

(D) Adopt, publish, and from time to time revise such rules and regulations not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this chapter.

(2)(A)(i) All fees shall be established by the board.

(ii) The licensing fee shall not be more than seventy-five dollars (\$75.00) and shall be an amount reasonably calculated to cover the costs of issuing the license to practice and otherwise administer this chapter.

(iii) The examination fee shall be an amount reasonably calculated to cover the costs of the examination and otherwise administer this chapter.

(iv) In addition, the board will determine the late fee.

(v) All such fees shall be used only for the purposes authorized in this chapter.

(B) Any money not used by the Department of Health to administer the licensing program within a fiscal year shall be carried forward into the next fiscal year.

(b) The Medical Ionizing Radiation Licensure Committee is authorized to:

(1) Adopt suitable bylaws for carrying out its duties under the provisions of this chapter;

(2) Have an official seal that shall bear the words “Medical Ionizing Radiation Licensure Committee”;

(3)(A) Provide a secretary’s certificate.

(B) The certificate of the Secretary of the Medical Ionizing Radiation Licensure Committee under seal shall be accepted in the courts of the state as the best evidence as to the minutes of the committee and shall likewise be accepted in the courts of the state as the best evidence as to the licensure or nonlicensure of any person under the requirements of this chapter;

(4) Keep a record of all its proceedings, receipts, and disbursements;

(5) Recommend to the board standards for applicants wishing to take the licensing examination and conduct examinations or contract with persons or entities to conduct examinations of applicants;

(6) Grant, deny, renew, suspend, or revoke licenses for any cause stated in this chapter; and

(7) Conduct disciplinary proceedings as provided in this chapter.

(c)(1) In the performance of its duties, the committee is empowered to administer oaths and take testimony on any matters within the committee’s jurisdiction and issue subpoenas and thereby compel the attendance of persons before it for the purpose of examining any facts or conditions properly pending before the committee.

(2) All subpoenas issued by the committee shall be served in the manner prescribed by law for the service of subpoenas issuing from the courts, and all persons so served shall obey the subpoenas or be subject to the penalties provided by law for the disobedience of subpoenas issuing from the courts.

History. Acts 1999, No. 1071, § 5; 2003, No. 1395, §§ 4, 5.

A.C.R.C. Notes. Acts 2007, No. 655, § 1, provided: “The Arkansas State Board of Health’s regulatory authority over radi-

ologist assistants and radiology practitioner assistants pursuant to § 17-106-105(a)(1)(C) is transferred to the Arkansas State Medical Board.”

17-106-106. Legal title — License limitations — Prohibited acts.

(a) Other than a licensed practitioner, radiologic technologist, licensed technologist, or limited licensed technologist, no person shall use radioactive materials or medical equipment emitting or detecting ionizing radiation on human beings for diagnostic or therapeutic purposes.

(b) A person holding a license under this chapter shall use radioactive substances or medical equipment emitting or detecting ionizing radiation on a human being:

(1) By prescription of a licensed practitioner or advanced practice nurse; and

(2) Only if the application of a substance or the use of equipment is limited in a manner specified in this section.

(c) A person holding a limited license under this chapter shall use medical equipment emitting or detecting ionizing radiation on a human being:

(1) By prescription of a licensed practitioner or advanced practice nurse; and

(2) Only if the limited licensed technologist is licensed for those specific body parts.

(d) No other person shall be entitled to use the titles or designated letters who is not licensed under this chapter. No person shall depict himself or herself orally or in writing, expressly or by implication, as holder of a license who does not hold a current license under this chapter.

(e) No person shall knowingly or negligently employ a person to apply ionizing radiation or administer radiopharmaceuticals to a human being or otherwise engage in the practice of radiologic technology unless the person possesses a valid license issued under the provisions of this chapter within that specific category.

(f) A person shall not apply ionizing radiation or administer radiopharmaceuticals to a human being or otherwise engage in the practice of radiologic technology unless the person possesses a valid license issued under this chapter.

(g) Any person who has an application for a temporary license pending before the Medical Ionizing Radiation Licensure Committee shall be permitted to engage in the activities described in this section.

History. Acts 1999, No. 1071, § 6;
2003, No. 1395, §§ 6, 7.

17-106-107. Licensing requirements.

(a) The Medical Ionizing Radiation Licensure Committee shall license any applicant who shall:

(1) Make application and pay a nonrefundable fee established by the State Board of Health; and

(2) Submit satisfactory evidence verified by oath or affirmation that the applicant:

(A) Is qualified to administer radioactive materials or operate medical equipment emitting or detecting ionizing radiation upon human beings;

(B) Is of good moral character;

(C) Is at least eighteen (18) years of age at the time of application; and

(D) Has been awarded a high school diploma or has passed the General Educational Development Test or the equivalent.

(b) In addition to the requirements of subsection (a) of this section, any person seeking to obtain a license in a specific area of radiologic technology must comply with the following requirements:

(1) Each applicant for a license as a radiologic technologist, radiation therapist, or nuclear medicine technologist shall have satisfactorily completed an approved course of study in radiography, radiation therapy, or nuclear medicine, respectively, that is accredited by the Joint Review Committee on Education in Radiologic Technology, Joint

Review Committee on Educational Programs in Nuclear Medicine Technology, or regional or national accreditation as deemed acceptable by the board; and

(2) The curriculum for each course of study shall follow the standards approved by the United States Department of Education, provided that the standards do not conflict with board policies.

(c) The board shall establish criteria and standards within the state for educational programs in radiologic technology, which are not covered under §§ 6-51-601 — 6-51-617, and recognize these programs upon finding that the criteria and standards have been met.

(d) Notwithstanding the provisions of this section previously set forth, for a period not to exceed one (1) year after July 30, 1999, upon application and the payment of the fee equivalent of that required for the written examination and initial licensing fee, the board shall issue a license without examination to any person currently employed as a person using radioactive materials or medical equipment emitting and detecting ionizing radiation on a human being.

(e) Licensees shall submit proof of having successfully completed at least six (6) hours of continuing medical education annually for license renewal. Continuing education may be provided by the licensed practitioner or a hospital in-service education department according to the rules and regulations prescribed by the board.

History. Acts 1999, No. 1071, § 7; substituted “or has passed the General
2003, No. 1395, § 8; 2007, No. 827, § 141. Educational Development Test” for “GED”

Amendments. The 2007 amendment in (a)(2)(D), and made related changes.

17-106-108. Examinations.

(a) With the exception of those who are grandfathered under this chapter, each applicant for licensure shall be required to pass a license examination designated and approved by the State Board of Health. Standards for acceptable performance shall be established.

(b) The State Board of Health shall identify acceptable examinations such as those administered by the American Registry of Radiologic Technologists, the American Chiropractic Registry of Radiologic Technologists, or the Nuclear Medicine Technology Certification Board.

(c) An applicant who fails to pass the examination may reapply for the examination if the applicant complies with the regulation established by the State Board of Health.

(d) The State Board of Health may accept a current certificate issued by the American Registry of Radiologic Technologists, the American Society of Clinical Pathologists, the American Chiropractic Registry of Radiologic Technologists, the Cardiovascular Credentialing International, or the Nuclear Medicine Technology Certification Board issued on the basis of an examination satisfactory to the State Board of Health if the standards of those bodies are at least as stringent as those established by the State Board of Health.

(e) The State Board of Health may accept a current certificate, registration, or license as a radiologic technologist issued by another state if the standards in the other state are at least as stringent as those established by the State Board of Health.

(f)(1) The State Board of Health shall identify acceptable examinations appropriate to the discipline for the limited licensed technologist.

(2) A study guide containing information to be included on the examination will be provided to the applicant for the examination.

History. Acts 1999, No. 1071, § 8;
2003, No. 1395, § 9.

17-106-109. Licenses.

(a) The Medical Ionizing Radiation Licensure Committee may issue a license to each applicant who has either successfully passed the examination or qualified under § 17-106-107(d) and (e) and has paid the prescribed fees.

(b)(1) At its discretion, the committee may issue a temporary license to any person whose licensure or relicensure may be pending and when issuance may be justified by special circumstances.

(2) A temporary license shall be issued only if the committee finds that it will not violate the purpose of this chapter or endanger the public health and safety.

(3) A temporary license shall not remain in force longer than one hundred eighty (180) days.

(4) Unless an individual demonstrates to the committee a hardship or a continual progression in fulfilling the educational and certification requirements of a modality recognized by the State Board of Health, no more than two (2) temporary licenses shall be issued to any individual within a specific category.

(c) Holders of a license under this chapter shall display the official license document or a notarized copy in each place of employment, and the document shall be made available upon request.

(d)(1) A license shall be renewed by the committee for a period of one (1) year upon payment of renewal fees in an amount established by the board.

(2) As a prerequisite for renewal, continuing education requirements shall be set by regulation.

(e)(1)(A) Any person licensed under this chapter whose license has lapsed and who has ceased activities as a licensee for less than five (5) years may apply for relicensure upon payment of a fee set by the board.

(B) For periods of more than five (5) years, licensure shall be in a manner as designated by the board.

(C) Continuing education requirements shall be set by regulation.

(2) This subsection shall not apply to anyone whose license has been revoked or suspended.

History. Acts 1999, No. 1071, § 9;
2003, No. 1395, § 10.

17-106-110. Discipline.

(a) Any license issued by the Medical Ionizing Radiation Licensure Committee may be suspended or revoked or the individual may be censured, reprimanded, or otherwise sanctioned by the committee in accordance with the provisions and procedures of this chapter if after due process it is found that the individual:

(1) Is guilty of fraud or deceit in the procurement or holding of the license;

(2) Has been convicted of a felony in a court of competent jurisdiction either within or outside of this state unless the conviction has been reversed and the holder of the license has been discharged or acquitted or if the holder has been pardoned with full restoration of civil rights, in which case the license shall be restored;

(3) Is or has been afflicted with any medical problem, disability, or addiction that in the opinion of the board would impair professional competence;

(4) Has knowingly aided and abetted a person who is not a radiologic technologist or otherwise authorized by § 17-106-111(b) to perform the duties of a license holder under this chapter;

(5) Has undertaken or engaged in any practice beyond the scope of duties permitted a license holder under this chapter;

(6) Has impersonated a license holder or former license holder or is performing the duties of a radiologic technologist, licensed technologist, or limited licensed technologist under an assumed name;

(7) Has been found guilty of violations of a code of ethics that the board shall establish by regulation;

(8) Has applied ionizing radiation without the prescription of a licensed practitioner;

(9) Has interpreted a diagnostic image for a fee;

(10) Is or has been found guilty of incompetence or negligence in his or her performances as a license holder; or

(11) Has failed to comply with any provision of this chapter or any of the rules or regulations pertaining to this chapter.

(b)(1)(A) Proceedings against the holder of a license under this chapter shall be instituted by filing a written charge or charges with the Medical Ionizing Radiation Licensure Committee.

(B) The charge or charges may be brought by a person, corporation, association, public officer, or the board.

(2)(A) The Chair of the Medical Ionizing Radiation Licensure Committee shall appoint a subcommittee of three (3) committee members to examine the charge or charges and prepare a written recommendation to the committee stating whether the charge or charges should be dismissed or brought against the licensee.

(B) If the committee determines that the charge or charges contain sufficient merit, the chair shall set a time and place for a hearing.

(C) A copy of the charge or charges, together with the notice of the time and place of the hearing, shall be served on the person charged either in person or by registered mail at least thirty (30) days before the date set for the hearing.

(D) The accused shall have the right to appear at the hearing with counsel, to answer the charge or charges, cross examine witnesses, and produce evidence and witnesses in his or her defense.

(E) The committee shall have the power to issue subpoenas for the appearance of witnesses and take testimony under oath.

(c) Any licensee who violates any provision of this chapter or any rule or order made pursuant to this chapter shall be subject to a cease and desist order and a fine of not more than one thousand dollars (\$1,000) per incident.

(d) All hearings and appeals from hearings to the board under this chapter shall be pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1999, No. 1071, § 10; 2003, No. 1395, §§ 11, 12.

17-106-111. Exemptions.

(a)(1) Dentists, dental hygienists, registered dental assistants with the expanded duty of radiography, radiation health physicists, radiation medical physicists, chiropractic externs, bone densitometrists, and certified medical dosimetrists are excluded from this chapter.

(2) Any exemptions from the provisions of this chapter are exclusive to those enumerated in this subsection.

(b) The requirement of a license shall not apply to a student enrolled in and attending a school of radiologic technology, radiation therapy, or nuclear medicine with recognized educational accreditation who uses radioactive material on or applies ionizing radiation to a human being while under the supervision of a licensed practitioner or licensed radiologic technologist.

(c) Nothing in the provisions of this chapter relating to radiologic technology shall limit, enlarge, or affect the practice of licensed practitioners herein defined.

History. Acts 1999, No. 1071, § 11; 2003, No. 1395, § 13; 2009, No. 1375, § 1. inserted “chiropractic externs” in (a)(1) and made a related change.

Amendments. The 2009 amendment

SUBCHAPTER 2 — REGULATION OF RADIOLOGIST ASSISTANTS AND RADIOLOGY PRACTITIONER ASSISTANTS

SECTION.	SECTION.
17-106-201. Radiologist assistant and radiology practitioner assistant — License required.	17-106-202. Rules.
	17-106-203. Fee.
	17-106-204. Penalties.

17-106-201. Radiologist assistant and radiology practitioner assistant — License required.

(a) The Arkansas State Medical Board shall grant a license to practice as a radiologist assistant and a radiology practitioner assistant to a qualified applicant who complies with the rules for licensure adopted under this subchapter.

(b) An individual shall not practice as a radiologist assistant or a radiology practitioner assistant unless the person is licensed as a radiologist assistant or a radiology practitioner assistant by the board.

History. Acts 2009, No. 1457, § 1.

17-106-202. Rules.

The Arkansas State Medical Board shall adopt rules to:

(1) Define the qualifications for licensure of a radiologist assistant or a radiology practitioner assistant;

(2)(A) Define the services that may be performed by a radiologist assistant or a radiology practitioner assistant, and the level of supervision required for the performance of a radiologist assistant or a radiology practitioner assistant.

(B) The rules adopted under subdivision (2)(A) of this section shall specify that a radiologist assistant or radiology practitioner assistant shall not interpret images, make diagnoses, or prescribe medications or therapies;

(3)(A) Define the qualifications of a supervising physician.

(B) The rules adopted under subdivision (3)(A) of this section shall specify the manner and scope of supervision that a licensed physician must employ when supervising a radiologist assistant or a radiology practitioner.

(C)(i) Only a physician licensed to practice medicine in the State of Arkansas under § 17-95-401 et seq. who resides in Arkansas or in an immediately contiguous county of an adjacent state and who is a diagnostic radiologist certified by or eligible for certification by the American Board of Radiology or an equivalent board approved by the Arkansas State Medical Board may utilize the services of a radiologist assistant or a radiology practitioner assistant.

(ii) However, a physician may utilize the services of a radiologist assistant or a radiology practitioner assistant under subdivision (3)(C)(i) of this section only if the physician supervises the radiologist assistant or radiology practitioner assistant;

(4) Establish requirements for annual renewal of the license of a radiologist assistant and a radiology practitioner assistant;

(5) Establish continuing education requirements for renewal of licensure for a radiologist assistant and a radiology practitioner assistant; and

(6) Establish a program for probation of a radiologist assistant and a radiology practitioner assistant.

History. Acts 2009, No. 1457, § 1.

17-106-203. Fee.

The Arkansas State Medical Board shall charge a licensure application fee not to exceed the administrative and disciplinary costs incurred by the board in administering the licensure program under this subchapter.

History. Acts 2009, No. 1457, § 1.

17-106-204. Penalties.

If a radiologist assistant or a radiology practitioner assistant is found by the Arkansas State Medical Board to have violated the Arkansas Medical Practices Act, § 17-95-201 et seq., or the rules adopted under this subchapter, the board may impose one (1) or more of the following penalties:

- (1) Suspension or revocation of the license to practice as a radiologist assistant or radiology practitioner assistant;
- (2) A fine not to exceed one thousand dollars (\$1,000) per violation;
- (3) Recovery from the radiologist assistant or the radiology practitioner assistant of the costs of an investigation and hearing if the radiologist assistant or the radiology practitioner assistant is found to have violated the Arkansas Medical Practices Act, § 17-95-201 et seq., or the rules adopted under this subchapter;
- (4) Placement of the radiologist assistant or the radiology practitioner assistant under probation; and
- (5) A reprimand.

History. Acts 2009, No. 1457, § 1.

CHAPTER 107

ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS ORTHOTICS, PROSTHETICS, AND PEDORTHICS ADVISORY BOARD.
- 3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-107-101. Title.
- 17-107-102. Purpose.
- 17-107-103. Definitions.

SECTION.

- 17-107-104. Exemptions.
- 17-107-105. Criminal penalty.
- 17-107-106. Civil penalty and injunction.

17-107-101. Title.

This chapter shall be known and may be cited as the “Arkansas Orthotics, Prosthetics, and Pedorthics Practice Act of 2007”.

History. Acts 2007, No. 174, § 1.

17-107-102. Purpose.

Since the professions related to orthotics, prosthetics, and pedorthics significantly affect the lives of the people of this state, it is the purpose of this chapter to protect resources available to the Arkansas Medicaid Program and the public in general by setting standards of qualification, training, and experience for those who represent themselves to the public as orthotists, prosthetists, and pedorthists and by promoting high standards of professional performance for those engaged in the practice of orthotics, prosthetics, and pedorthics.

History. Acts 2007, No. 174, § 1.

17-107-103. Definitions.

As used in this chapter:

(1)(A) "Orthosis" means an external device that is:

(i) Intended to restore physiological function or cosmesis to a patient; and

(ii) Custom-designed, fabricated, assembled, fitted, or adjusted for the patient using the device prior to or concurrent with the delivery of the device to the patient.

(B) "Orthosis" does not include a cane, a crutch, a corset, a dental appliance, an elastic hose, an elastic support, a fabric support, a generic arch support, a low-temperature plastic splint, a soft cervical collar, a truss, or other similar device that:

(i) Is carried in stock and sold without therapeutic modification by a corset shop, department store, drug store, surgical supply facility, or similar retail entity; and

(ii) Has no significant impact on the neuromuscular, musculoskeletal, or neuromusculoskeletal functions of the body;

(2) "Orthotic assistant" means an individual who is licensed under this chapter to assist an orthotist or an orthotist/prosthetist with patient care services and fabrication of orthoses under the supervision of an orthotist or an orthotist/prosthetist;

(3) "Orthotic education program" means a course of instruction in orthotics:

(A) Accredited by the Commission on Accreditation of Allied Health Education Programs; and

(B) Approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board;

(4) "Orthotic resident" means an individual who has completed an orthotic education program and is continuing his or her clinical education in an orthotic residency program:

(A) Accredited by the National Commission on Orthotic and Prosthetic Education; and

(B) Approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board;

(5) "Orthotics" means the science and practice of providing or managing the provision of an orthosis based on clinical assessment, technical judgment, and an order from a health care practitioner authorized by law to write an order for an orthosis;

(6) "Orthotist" means an individual who is licensed under this chapter to practice orthotics and pedorthics;

(7) "Orthotic/prosthetic assistant" means an individual who is licensed under this chapter to assist both an orthotist and a prosthetist with patient care services and fabrication of prostheses, orthoses, or pedorthic devices under the supervision of an orthotist, an orthotist/prosthetist, or a prosthetist as appropriate;

(8) "Orthotist/prosthetist" means an individual who is licensed to practice orthotics, pedorthics, and prosthetics;

(9)(A) "Pedorthic device" means therapeutic footwear, foot orthoses for use at the ankle or below, or footwear modified for therapeutic purposes as ordered by a licensed health care practitioner authorized by law to write an order for a pedorthic device.

(B) "Pedorthic device" does not include:

(i) Nontherapeutic accommodative inlays or nontherapeutic accommodative footwear regardless of method of manufacture;

(ii) Shoes modified or made for nontherapeutic purposes;

(iii) Unmodified shoes; or

(iv) Prefabricated foot care products;

(10) "Pedorthic education program" means a course of instruction in pedorthics:

(A) Accredited by the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc.; and

(B) Approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board;

(11) "Pedorthics" means the science and practice of providing or managing the provision of a pedorthic device based on clinical assessment, technical judgment, and an order from a health care practitioner authorized by law to write an order for a pedorthic device;

(12) "Pedorthist" means an individual who is licensed under this chapter to practice pedorthics;

(13)(A) "Prefabricated device" means a mass-produced device that:

(i) Is prepackaged, carried in stock, and sold off the shelf or over the counter by a corset shop, department store, drug store, surgical supply facility, or similar retail entity; and

(ii) Does not require clinical assessment, technical judgment, or therapeutic modification for appropriate use by the customer.

(B) "Prefabricated device" may include a cane, a crutch, a corset, an elastic hose, an elastic support, a fabric support, a generic arch support, a low-temperature plastic splint, a soft cervical collar, a truss, or other similar device;

(14)(A) "Prosthesis" means an external device that is:

(i) Intended to replace an absent external body part for the purpose of restoring physiological function or cosmesis to a patient; and

(ii) Custom-designed, fabricated, assembled, fitted, or adjusted for the patient using the device prior to or concurrent with being delivered to the patient.

(B) "Prosthesis" does not include an artificial eye, an artificial ear, a dental appliance, a cosmetic device, such as artificial eyelashes or wigs, an artificial facial device, or other device that does not have a significant impact on the neuromuscular, musculoskeletal, or neuromusculoskeletal functions of the body;

(15) "Prosthetic assistant" means an individual who is licensed under this chapter to assist a prosthetist or orthotist/prosthetist with patient care services and fabrication of prostheses under the supervision of a prosthetist or an orthotist/prosthetist;

(16) "Prosthetic education program" means a course of instruction in prosthetics:

(A) Accredited by the Commission on Accreditation of Allied Health Education Programs; and

(B) Approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board;

(17) "Prosthetic resident" means an individual who has completed a prosthetic education program and is continuing his or her clinical education in a prosthetic residency program:

(A) Accredited by the National Commission on Orthotic and Prosthetic Education; and

(B) Approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board;

(18) "Prosthetics" means the science and practice of providing or managing the provision of a prosthesis based on clinical assessment, technical judgment, and an order from a health care practitioner authorized to write an order for a prosthesis; and

(19) "Prosthetist" means an individual who is licensed under this chapter to practice prosthetics.

History. Acts 2007, No. 174, § 1.

17-107-104. Exemptions.

Nothing in this chapter shall be construed to restrict:

(1) The practice of orthotics, prosthetics, or pedorthics by:

(A) An individual who is employed by the federal government or any bureau, division, or agency of the federal government while in the discharge of the employee's official duties;

(B) A student enrolled in an orthotic education program, prosthetic education program, or pedorthic education program;

(C) An orthotic resident or prosthetic resident; or

(D) A student participating in a pedorthic work experience program or internship approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board;

(2) A licensed health care practitioner from engaging in the full scope of practice of the practitioner's profession or from doing work within the standards and ethics of his or her respective professions;

(3) An individual from sizing a prefabricated device, including without limitation, diabetic shoes and similar devices, for a customer if the individual:

(A) Is acting under the supervision and control of a pharmacist or pharmacy licensed under § 17-92-101 et seq.;

(B) Does not cast, measure, mold, or scan a part of the human body for the purpose of constructing an external device intended to treat a customer's medical condition; and

(C) Can provide satisfactory evidence of one (1) of the following:

(i) The individual has documentation of training from an orthotist, a prosthetist, a pedorthist, or a manufacturer approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board;

(ii) The individual is certified or registered as an orthotic fitter or a pedorthic fitter by a nationally recognized board or association approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board; or

(iii) The individual works under the direct supervision of an orthotic fitter or pedorthic fitter who is certified or registered by a nationally recognized board or association approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board;

(4)(A) Any other licensed health care professional within this state, or prevent a member of any health care profession or any person employed by or supervised by a licensed health care professional from doing work of a nature consistent with the person's training, so long as the licensed health care professional does not hold himself or herself out to the public as a licensee under this chapter.

(B) The exemption created in subdivision (4)(A) of this section expressly exempts licensure manufacturers' representatives so long as the process of measuring and fitting of the orthotic, prosthetic, or pedorthic device takes place under the supervision of a qualified member of a licensed health care profession within this state; and

(5) A licensed athletic trainer from engaging in the full scope of practice of the athletic trainer's profession or from doing work within the standards and ethics of the Arkansas State Board of Athletic Training.

History. Acts 2007, No. 174, § 1.

17-107-105. Criminal penalty.

(a)(1) It is a Class C misdemeanor for any individual to:

(A) Practice orthotics, prosthetics, or pedorthics in this state unless he or she is licensed under this chapter;

(B) Hold himself or herself out as being able to practice orthotics, prosthetics, or pedorthics in this state;

(C) Dispense an orthosis, a prosthesis, or a pedorthic device unless he or she is licensed under this chapter;

(D) Represent himself or herself to the public by title or description of services that includes any of the following terms unless he or she is licensed under this chapter:

(i) "Orthotic", "orthotist", "brace", or a similar title or description of services;

(ii) "Pedorthic", "pedorthist", or a similar title or description of services; or

(iii) "Prosthetic", "prosthetist", "artificial limb", or a similar title or description of services;

(E) Practice orthotics, prosthetics, or pedorthics during the time his or her license is suspended; or

(F) Otherwise violate any provisions of this chapter or rules promulgated under this chapter.

(2) Each day an offense under this section continues is a separate offense.

(b) The Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board and the Department of Health shall assist the prosecuting attorney in the enforcement of this chapter.

History. Acts 2007, No. 174, § 1.

17-107-106. Civil penalty and injunction.

(a)(1) The Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board may levy a civil penalty not to exceed one thousand dollars (\$1,000) for each violation of this chapter or rules promulgated under this chapter against any individual found by the board to be in violation of this chapter or rules promulgated under this chapter.

(2) Each day a violation continues is a separate offense.

(3) Unless the civil penalty imposed under this section is paid within fifteen (15) calendar days following the date for an appeal from the order, the board may file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of the unpaid civil penalty.

(4)(A) The imposition of a civil penalty under this section does not relieve an individual from criminal prosecution under this chapter or from the imposition of an injunction under this section.

(B) The remedy of a civil penalty under this section is additional to any other penalties that may be imposed by the board or by a circuit court under this chapter.

(b)(1) The board may petition any circuit court having jurisdiction over an individual who is practicing without a license as required by this chapter, an individual to whom a license has been denied, or an individual whose license has been suspended or revoked by action of the board under this chapter to enjoin the individual from continuing to practice within this state.

(2)(A) The issuance of an injunction under this section shall not relieve an individual from criminal prosecution under this chapter or the imposition of civil penalties under this section.

(B) The remedy of an injunction under this section is additional to any other penalties that may be imposed by the board or by a circuit court under this chapter.

History. Acts 2007, No. 174, § 1.

**SUBCHAPTER 2 — ARKANSAS ORTHOTICS, PROSTHETICS, AND PEDORTHICS
ADVISORY BOARD**

SECTION.

- 17-107-201. Board — Creation.
- 17-107-202. Organization and proceedings.
- 17-107-203. Power to issue subpoenas and subpoenas duces tecum.

SECTION.

- 17-107-204. State Board of Health — Powers and duties.
- 17-107-205. Deposit of funds.

17-107-201. Board — Creation.

(a) There is created the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board consisting of seven (7) members as follows:

(1)(A) Five (5) individuals, each of whom is eligible for licensure as an orthotist, a prosthetist, or a pedorthist.

(B) One (1) of the five (5) individuals appointed under subdivision (a)(1)(A) of this section may be a retired orthotist, prosthetist, or pedorthist;

(2) One (1) member who is a representative of the Division of Medical Services of the Department of Human Services; and

(3) One (1) member who is a representative of the public at large.

(b) The Governor shall appoint the members subject to confirmation by the Senate.

(c)(1) Each initial member who is eligible for licensure as an orthotist, a prosthetist, or a pedorthist shall be selected from a list of fifteen (15) candidates who have practiced orthotics, prosthetics, or pedorthics for at least three (3) years. The Arkansas State Orthotic and Prosthetic Association shall submit the list of candidates to the Governor no later than July 1, 2007.

(2)(A) Each successor member shall be selected from a list of three (3) individuals per position submitted to the Governor by the board.

(B) Each successor member shall have practiced orthotics, prosthetics, or pedorthics for at least three (3) years preceding his or her appointment and shall be licensed under this chapter as an orthotist, a prosthetist, or a pedorthist.

(d)(1) The Governor shall designate the terms of the initial appointees so that three (3) members shall serve three-year terms, two (2) members shall serve two-year terms, and two (2) members shall serve one-year terms.

(2)(A)(i) Except as provided in subdivision (d)(2)(A)(ii) of this section, each successor member shall serve three-year terms.

(ii) An individual appointed to fill a vacancy resulting in an unexpired term shall only serve for the remainder of the unexpired term.

(B) The Governor shall fill any vacancy on the board in the same manner as other appointments.

(3)(A) Except as provided in subdivision (d)(3)(B) of this section, no member shall serve more than two (2) consecutive terms.

(B) The member who is a representative of the Division of Medical Services of the Department of Human Services may succeed himself or herself.

(e) Upon recommendation of the board made after notice and hearing, the Governor may remove any member for incompetence, neglect of duty, or malfeasance in office.

History. Acts 2007, No. 174, § 1.

17-107-202. Organization and proceedings.

(a)(1) Within thirty (30) days after the initial appointment of the members of the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board, the Governor shall call the first meeting of the board for the purpose of organization.

(2) The board shall elect a chair and vice chair at its first regularly scheduled meeting of each calendar year.

(3) The board shall meet as frequently as it deems necessary, at such times and places as the board designates. Additional meetings may be held upon call of the chair or upon written request of four (4) members.

(b) A quorum of the board shall consist of four (4) members.

(c) The members of the board shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq. However, the expenses shall in no case exceed funds available to the board.

(d) All proceedings of the board shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) The Division of Medical Services of the Department of Human Services shall provide staff support for the board.

History. Acts 2007, No. 174, § 1.

17-107-203. Power to issue subpoenas and subpoenas duces tecum.

(a) In connection with its investigations and hearings, the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board may:

(1) Issue a subpoena to require any individual who has information germane to an investigation or a hearing conducted by the board to testify before the board; and

(2) Issue a subpoena duces tecum to require to be transmitted to the board any book, writing, document, or other paper or thing that is germane to an investigation or a hearing conducted by the board.

(b)(1) Service of a subpoena or a subpoena duces tecum shall be as provided by law for the service of a subpoena or a subpoena duces tecum in a civil case in a circuit court of this state. The fees and mileage of an officer serving a subpoena or a subpoena duces tecum and a witness appearing in answer to a subpoena shall be the same as provided by law for a proceeding in a civil case in a circuit court of this state.

(2)(A) The board shall issue a subpoena or a subpoena duces tecum upon the request of any party to a hearing before the board.

(B) The fees and mileage of an officer serving a subpoena or a subpoena duces tecum and a witness appearing in answer to a subpoena shall be paid by the party at whose request the witness is subpoenaed.

(c)(1) If an individual has been served with a subpoena or a subpoena duces tecum as provided in this section and fails to comply with the subpoena or the subpoena duces tecum, the board may apply to the circuit court of the county in which the board is conducting its investigation or hearing for an order causing the arrest of the individual and directing that the individual be brought before the court.

(2) The circuit court may punish the disobedient individual for contempt as provided by law for a proceeding of a civil case in a circuit court of this state.

History. Acts 2007, No. 174, § 1.

17-107-204. State Board of Health — Powers and duties.

(a) The State Board of Health shall adopt rules prescribing all of the following:

(1) Procedures for the issuance, renewal, inactivation, restoration, suspension, and revocation of a license or certification;

(2) Standards and procedures for formulating, evaluating, approving, and administering licensing examinations or recognizing other entities that conduct examinations;

(3) Procedures for the conduct of a disciplinary hearing;

(4) Standards of ethical and professional conduct in the practice of orthotics, prosthetics, and pedorthics;

(5) Standards for approving, denying, and withdrawing approval of national certification organizations in orthotics, prosthetics, and pedorthics;

(6) Standards for approving, denying, and withdrawing approval of educational programs required for licensure, including standards for foreign educational credentials;

(7) Standards for approving, denying, and withdrawing approval of continuing education programs required for license renewal;

(8) Standards for regulating advertising by individuals licensed under this chapter;

(9)(A) Fees and penalties for services relating to examination, licensing, endorsement, temporary permits, license renewal, and other services reasonably related to the practice of orthotics, prosthetics, or pedorthics as determined by the board.

(B) The fee for initial licensure and renewal of licensure for the practice of orthotics, pedorthics, or prosthetics shall be three hundred dollars (\$300) every two (2) years.

(C) The fee for initial certification and renewal of certification as an orthotic assistant, an orthotic/prosthetic assistant, or a prosthetic assistant shall be one hundred dollars (\$100) every two (2) years; and (10) Civil money penalties for violations of this chapter.

(b) The board may adopt other rules that are reasonably related to the safe and competent performance of prosthetics, orthotics, and pedorthics and necessary for the administration of this chapter.

History. Acts 2007, No. 174, § 1.

17-107-205. Deposit of funds.

All funds received by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board shall be deposited into the Health Facility Services Revolving Fund.

History. Acts 2007, No. 174, § 1.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-107-301. Orthotists.
- 17-107-302. Pedorthists.
- 17-107-303. Prosthetists.
- 17-107-304. Orthotic assistants, orthotic/prosthetic assistants, and prosthetic assistants.
- 17-107-305. Temporary permits.

SECTION.

- 17-107-306. License — Renewal.
- 17-107-307. License — Display.
- 17-107-308. License — Replacement.
- 17-107-309. License — Inactive status.
- 17-107-310. Disciplinary action.
- 17-107-311. Grandfather provisions.

17-107-301. Orthotists.

(a) An applicant for a license to practice orthotics shall submit to the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board written evidence verified by oath that the applicant:

- (1) Possesses a baccalaureate degree or has completed semester hours equivalent to four (4) years of study at a four-year college or university;
- (2) Has completed an orthotic education program;
- (3) Has completed a clinical residency in orthotics;
- (4) Is qualified to practice in accordance with commonly accepted standards of orthotic care; and
- (5) Satisfies any other requirements established by the board that are reasonably related to the practice of orthotics.

(b) The board may issue a license to practice orthotics to an applicant:

(1) By examination, if the applicant passes an examination approved by the board; or

(2) By endorsement, if the applicant has been licensed as an orthotist under the laws of another state, territory, or foreign country and meets the qualifications required of orthotists in this state.

History. Acts 2007, No. 174, § 1.

17-107-302. Pedorthists.

(a) An applicant for a license to practice pedorthics shall submit to the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board written evidence verified by oath that the applicant:

(1) Possesses a high school diploma or comparable credential approved by the board;

(2) Has completed a pedorthic education program;

(3) Has completed a qualified work experience program or internship in pedorthics;

(4) Is qualified to practice in accordance with commonly accepted standards of pedorthic care acceptable to the board; and

(5) Satisfies any other requirements established by the board that are reasonably related to the practice of pedorthics.

(b) The board may issue a license to practice pedorthics:

(1) By examination, if the applicant passes an examination approved by the board; or

(2) By endorsement, if an applicant has been licensed as a pedorthist under the laws of another state, territory, or foreign country and meets the qualifications required of pedorthists in this state.

History. Acts 2007, No. 174, § 1.

17-107-303. Prosthetists.

(a) An applicant for a license to practice prosthetics shall submit to the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board written evidence verified by oath that the applicant:

(1) Possesses a baccalaureate degree or has completed semester hours equivalent to four (4) years of study at a four-year college or university;

(2) Has completed a prosthetic education program;

(3) Has completed a clinical residency in prosthetics;

(4) Is qualified to practice in accordance with commonly accepted standards of prosthetic care; and

(5) Satisfies any other requirements established by the board that are reasonably related to the practice of prosthetics.

(b) The board may issue a license to practice prosthetics to an applicant:

(1) By examination, if the applicant passes an examination approved by the board; or

(2) By endorsement, if the applicant has been licensed as a prosthetist under the laws of another state, territory, or foreign country and meets the qualifications required of prosthetists in this state.

History. Acts 2007, No. 174, § 1.

17-107-304. Orthotic assistants, orthotic/prosthetic assistants, and prosthetic assistants.

An applicant for certification to practice as an orthotic assistant, an orthotic/prosthetic assistant, or a prosthetic assistant shall submit to the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board written evidence verified by oath that the applicant:

(1) Possesses a high school diploma or comparable credential approved by the board;

(2) Has a minimum of three (3) years of experience in the field in which the individual is seeking licensure as an assistant; and

(3) Has written documentation from a licensed prosthetist or a licensed orthotist that the applicant is qualified to perform as an assistant in the field in which the individual is seeking licensure as an assistant.

History. Acts 2007, No. 174, § 1; 2009, No. 200, § 1.

Amendments. The 2009 amendment substituted “three (3)” for “five (5)” in (2).

17-107-305. Temporary permits.

(a)(1) The Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board may issue a temporary permit to practice orthotics, prosthetics, or pedorthics to a qualified applicant who has:

(A) Satisfactorily completed an approved education program in the field in which the individual is seeking licensure; and

(B) Applied for or is awaiting results of the first examination he or she is eligible to take after the permit is issued.

(2) The temporary permit to practice orthotics, prosthetics, or pedorthics becomes invalid upon notification to the applicant of the results of the first examination he or she is eligible to take after the permit is issued.

(3)(A) A temporary permit issued under this subsection (a) is valid for no more than six (6) months.

(B) No more than two (2) temporary permits shall be issued to any individual within a specific category.

(b)(1) The board may issue a temporary permit to practice orthotics, prosthetics, or pedorthics to a qualified applicant awaiting endorsement and holding a current license to practice orthotics, prosthetics, or pedorthics, or the equivalent, from another jurisdiction, state, or territory.

(2) The temporary permit to practice orthotics, prosthetics, or pedorthics shall:

- (A) Specify the date it was issued and its expiration date; and
- (B) Not be valid for more than six (6) months.

History. Acts 2007, No. 174, § 1; 2009, No. 200, § 2.

Amendments. The 2009 amendment added (a)(3).

17-107-306. License — Renewal.

(a) An individual licensed or certified under this chapter shall renew his or her license or certification with the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board in accordance with this section and procedures established by the board.

(b)(1) At least sixty (60) days prior to the renewal date of a individual's license or certification under this chapter, the board shall:

- (A) Mail to the individual a renewal application for his or her license or certification; and
- (B) Notify the individual of the renewal date of his or her license or certification.

(2) The board shall mail the renewal application to the most recent address of the individual as the address appears in the records of the board.

(3) The individual shall complete the renewal application and return it to the board with the required renewal fee by the renewal date of the individual's license or certification.

(c) The board shall renew the individual's license or certification for the next licensure or certification period if:

- (1) The board receives the individual's renewal application by the renewal date of the individual's license or certification;
- (2) The board determines that the individual's renewal application is accurate; and
- (3) The renewal fee is paid by the renewal date of the individual's license or certification.

(d) An individual's license or certification under this chapter automatically expires and is forfeited if:

- (1) The board does not receive the individual's renewal application by the renewal date of the individual's license or certification;
- (2) The board determines that the renewal application is not accurate; or
- (3) The renewal fee is not paid by the renewal date of the individual's license or certification.

(e) Any individual who fails to renew his or her license or certification as provided in this section may be reinstated by the board if:

- (1) The individual submits to the board:
 - (A) Written evidence verified by oath that the individual's renewal application was submitted in a timely manner; or
 - (B) A renewal application, and the board determines that the renewal application is accurate; and

(2) The renewal fee plus a penalty is paid by a date specified by the board.

History. Acts 2007, No. 174, § 1.

17-107-307. License — Display.

An individual licensed or certified under this chapter shall:

(1) Keep his or her license prominently displayed in his or her office or in a place in which he or she practices; or

(2) Store his or her license in a place from which the license can be immediately produced upon request of a patient or a representative of the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board.

History. Acts 2007, No. 174, § 1.

17-107-308. License — Replacement.

(a) An individual licensed or certified under this chapter whose license has been lost or destroyed may apply to the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board for a replacement. The application shall be accompanied by an affidavit setting out the facts concerning the loss or destruction of the original license.

(b) An individual licensed or certified under this chapter whose name is changed by marriage or court order may surrender his or her license and apply to the board for a replacement license.

History. Acts 2007, No. 174, § 1.

17-107-309. License — Inactive status.

(a) An individual licensed or certified under this chapter may place his or her license or certification on inactive status by notifying the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board in writing.

(b)(1) The holder of an inactive license or certification is excused from payment of renewal fees and shall not practice in his or her area of licensure or certification in this state.

(2) Any individual who engages in the practice of orthotics, pedorthics, or prosthetics or serves as an orthotic assistant, orthotic/prosthetic assistant, or prosthetic assistant while his or her license or certification under this chapter is inactive is considered to be practicing without a license or certification. Practicing without a license or certification is grounds for discipline under § 17-107-310.

(c) The board may restore an inactive license or certification under this chapter if:

(1) The holder of the inactive license or certification:

(A) Successfully completes the continuing education requirements established by the board; and

(B) Complies with rules established by the board; and

(2) The current renewal fee is paid by a date specified by the board.

History. Acts 2007, No. 174, § 1.

17-107-310. Disciplinary action.

The Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board may deny, suspend, revoke, or restrict any license or certification issued under this chapter or otherwise discipline an individual licensed or certified under this chapter upon proof that the individual:

(1) Has pleaded guilty or nolo contendere to or has been found guilty of a felony;

(2) Has used intoxicating liquors, narcotics, controlled substances, or other drugs in a manner that adversely affects the license or certificate holder's ability to practice;

(3) Has become physically or mentally incompetent to practice to the extent that the license or certificate holder's professional competence is impaired and the public is endangered;

(4) Has committed fraud or deceit in the procuring or attempting to procure a license or certification under this chapter;

(5) Has aided or abetted an unlicensed or uncertified individual to perform the duties of a license or certificate holder under this chapter;

(6) Has engaged in any practice beyond the scope of duties permitted a license or certificate holder under this chapter;

(7) Is incompetent or grossly negligent in his or her performance as a license or certification holder;

(8) Has engaged in unprofessional or unethical conduct;

(9) Has advertised in a false, fraudulent, deceptive, or misleading manner;

(10) Has knowingly betrayed a professional secret;

(11) Has violated a regulation of the board;

(12) Has violated a term of probation or an order previously imposed by the board; or

(13) Has had a license, certificate, or registration revoked or suspended or has been placed on probation or under disciplinary order in any jurisdiction.

History. Acts 2007, No. 174, § 1.

17-107-311. Grandfather provisions.

(a)(1) Until December 31, 2007, the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board may issue a license to practice orthotics under this chapter to:

(A) An individual who makes application for licensure as an orthotist, pays the required licensure fee, and submits evidence of certification from one (1) of the following:

(i) The American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc., as a Certified Orthotist or Certified Orthotist/Prosthetist;

(ii) The Board for Orthotist/Prosthetist Certification, Inc., as an Orthotist, BOC — Certified; or

(iii) Any other accrediting body with equivalent educational requirements and examination standards that is approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board; and

(B)(i) An individual who makes application for licensure, pays the required licensure fee, and submits evidence satisfactory to the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board of a full-time practice in orthotics for a minimum of five (5) of the seven (7) years immediately prior to the date of application.

(ii) Licensure under this subdivision (a)(1) may require an investigation by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board of the applicant's work history and completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.

(2) Until December 31, 2007, the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board may issue a license to practice pedorthics under this chapter to:

(A) An individual who makes application for licensure as a pedorthist, pays the required licensure fee, and submits evidence of certification from one (1) of the following:

(i) The American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc., as a Certified Pedorthist;

(ii) The American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc., as a Certified Orthotist, Certified Prosthetist, or Certified Orthotist/Prosthetist;

(iii) The Board for Orthotist/Prosthetist Certification, Inc., as an Orthotist, BOC — Certified or Prosthetist, BOC — Certified; or

(iv) Any other accrediting body with equivalent educational requirements and examination standards that is approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board; and

(B)(i) An individual who makes application for licensure as a pedorthist, pays the required licensure fee, and submits evidence satisfactory to the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board of a full-time practice in pedorthics for a minimum of five (5) years of the seven (7) years immediately prior to the date of application.

(ii) Licensure under this subdivision (a)(2) may include an investigation by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board of the applicant's work history and completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.

(3) Until December 31, 2007, the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board may issue a license to practice prosthetics under this chapter to:

(A) An individual who makes application for licensure as a prosthetist, pays the required licensure fee, and submits evidence of certification from one (1) of the following:

(i) The American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc., as a Certified Prosthetist or Certified Orthotist/Prosthetist;

(ii) The Board for Orthotist/Prosthetist Certification, Inc., as a Prosthetist, BOC — Certified; or

(iii) Any other accrediting body with equivalent educational requirements and examination standards that is approved by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board; and

(B)(i) An individual who makes application for licensure as a prosthetist, pays the required licensure fee, and submits evidence satisfactory to the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board of a full-time practice in prosthetics for a minimum of five (5) of the seven (7) years immediately prior to the date of application.

(ii) Licensure under this subdivision (a)(3) may include an investigation by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board of the applicant's work history and completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.

(b) Beginning January 1, 2008, the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board shall issue a license only to:

(1) An applicant for licensure as an orthotist who satisfies the requirements of § 17-107-301;

(2) An applicant for licensure as a pedorthist who satisfies the requirements of § 17-107-302; and

(3) An applicant for licensure as a prosthetist who satisfies the requirements of § 17-107-303.

History. Acts 2007, No. 174, § 1.

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regulatory agencies.**

Appraisers, §17-14-103.

Federally related transaction.

Appraisers, §17-14-103.

FIFRA.

Pest control services, §17-37-102.

Financial institution.

Appraisers, §17-14-103.

Firearm.

Security agencies, §17-40-102.

DEFINED TERMS —Cont'd**Firm.**

Accountants, §17-12-103.
 Engineers, §17-30-101.
 Surveyors, §17-48-101.

FLEX.

Physicians and surgeons, §17-95-502.

Foreign entity.

Internet prescription consumer protection act, §17-92-1003.

Forestry.

Foresters, §17-31-102.

Foundation.

Appraisers, §17-14-103.

Funeral home.

Businesses, §17-29-501.

Fungi or rot control responsibility.

Pest control services, §17-37-102.

Gas utility serviceman.

Plumbers, §17-38-101.

Generically equivalent.

Pharmacists and pharmacies, §17-92-101.

Geologist.

Occupations, §17-32-102.

Geologist-in-training.

Occupations, §17-32-102.

Geology.

Geologist, §17-32-102.

Good moral character.

Accountants, §17-12-301.
 Architects, §17-15-102.

Goods.

Auctioneers, §17-17-103.

Grocers' drugs.

Pharmacists and pharmacies, §17-92-102.

Guard company.

Security agencies, §17-40-102.

Habilitation.

Speech-language pathologist and audiologist, §17-100-103.

Healing arts.

Restrictions on "doctor" as title, §17-80-109.

Health care services.

Restrictions on "doctor" as title, §17-80-109.

Health maintenance activities.

Nurses, §17-87-103.

Hearing instrument.

Hearing instrument dispensers, §17-84-101.

Heating, ventilation, air conditioning and refrigeration.

HVAC, §17-33-101.

Heat pump circulating pipe.

Water well constructors, §17-50-103.

DEFINED TERMS —Cont'd**Heat pump wells.**

Water well constructors, §17-50-103.

Highway.

Itinerant merchants, §17-49-202.

Highway patrol.

Itinerant merchants, §17-49-202.

Home inspection.

Home inspectors registration act, §17-52-303.

Home inspection report.

Home inspectors registration act, §17-52-303.

Home inspector.

Home inspectors registration act, §17-52-303.

Home medical equipment, legend device and medical gas supplier,

§17-92-901.

Home medical equipment services,

§17-92-901.

Horse power.

HVAC, §17-33-101.

Hospital.

Pharmacists and pharmacies, §17-92-602.

Hospital employee.

Hospital pharmacies, §17-92-602.

Hospital pharmacy, §17-92-602.**Hospital pharmacy technicians,**

§17-92-602.

Household pest and rodent.

Pest control services, §17-37-102.

HVACR.

Businesses, §17-33-101.

HVACR gas fitting work.

HVAC, §17-33-101.

HVACR licensing fund.

HVAC, §17-33-101.

HVACR maintenance work.

HVAC, §17-33-101.

Immediate supervision.

Veterinarians, §17-101-102.

Impaired dentist program.

Medical professions, §17-80-203.

Impaired optometrist treatment program, §17-90-503.**Impaired or impairment.**

Medical professions, §17-80-203.

Optometrists, §17-90-503.

Impaired pharmacist program,

§17-92-701.

Impaired pharmacists, §17-92-701.**Impaired physician program.**

Medical professions, §17-80-203.

Independent appraisal assignment,

§17-14-103.

DEFINED TERMS —Cont'd**Indigent.**

Prescription drug redispensing program, §17-92-1102.

Industrial maintenance electrician.

Occupations, §17-28-101.

Industry.

Electrical contractors and electricians, §17-28-102.

In-office assembled hearing instrument.

Hearing instrument dispensers, §17-84-101.

Insurer.

Bail bondsman, §17-19-101.

Intercollegiate sport.

Athletic agent, §17-16-102.

Interference with a licensee relationship.

Real estate licenses, §17-42-701.

Internet broker.

Internet prescription consumer protection act, §17-92-1003.

Internet site.

Internet prescription consumer protection act, §17-92-1003.

Internship.

Polygraph examiners, §17-39-102.

Intervention.

Impaired pharmacist program, §17-92-701.

Investigations company.

Private investigators, §17-40-102.

Ionizing radiation.

Medical ionizing radiation licensure, §17-106-103.

Itinerant entrepreneur.

Occupations, §17-49-301.

Itinerant merchant.

Occupations, §17-49-202.

Journeyman electrician.

Occupations, §17-28-101.

Journeyman plumber.

Occupations, §17-38-101.

Kick boxing.

Athletic commission, §17-22-101.

Kind of soil.

Soil classifiers, §17-47-101.

Landscape architect.

Occupations, §17-36-102.

Landscape architecture.

Occupations, §17-36-102.

Landscape designer, §17-36-102.**Land surveying.**

Surveyors, §17-48-101.

Late renewal.

Waterworks operators, §17-51-101.

DEFINED TERMS —Cont'd**Legend device.**

Medical equipment suppliers, §17-92-901.

License.

Accountants, §17-12-103.

Athletic trainers, §17-93-402.

Medical ionizing radiation licensure, §17-106-103.

Security agencies, §17-40-102.

Licensed.

Hearing instrument dispensers, §17-84-101.

Licensed alcohol and drug abuse counselor, §17-27-401.**Licensed allied health practitioner.**

Respiratory care practitioners, §17-99-102.

Licensed associate counselor.

Occupations, §17-27-102.

Licensed associate marriage and family therapist, §17-27-102.**Licensed dietitian.**

Occupations, §17-83-103.

Licensed dispensing optician.

Occupations, §17-89-102.

Licensed marriage and family therapist, §17-27-102.**Licensed operator.**

Pest control services, §17-37-102.

Licensed perfusionist, §17-104-102.

Perfusion, §17-104-102.

Licensed pharmacist.

Hospital pharmacies, §17-92-602.

Occupations, §17-92-101.

Licensed practitioner.

Medical ionizing radiation licensure, §17-106-103.

Licensed professional counselor.

Occupations, §17-27-102.

Licensed technologist.

Medical ionizing radiation licensure, §17-106-103.

Licensed veterinarian.

Professions, §17-101-102.

Licensee.

Accountants, §17-12-103.

Bail bondsman, §17-19-101.

HVAC, §17-33-101.

Massage therapy, §17-86-102.

Psychologically impacted property, §17-10-101.

Real estate licenses, §17-42-103.

Licensee relationship.

Real estate licenses, §17-42-701.

License holder.

Pest control services, §17-37-102.

DEFINED TERMS —Cont'd**Limited license.**

Medical ionizing radiation licensure,
§17-106-103.

Livestock auction barn.

Auctioneers, §17-17-103.

Livestock auction barn auctioneer.

Professions, §17-17-103.

Location information.

Fair debt collection practices act,
§17-24-502.

Manager.

Athletic commission, §17-22-101.
Private investigators and security
agencies, §17-40-102.

Manager-operator.

Cosmetology, §17-26-102.

Managing principal.

Appraisal management company
registration, §17-14-402.

Market analysis.

Appraisers, §17-14-103.

Marriage and family therapy,

§17-27-102.

Martial arts.

Athletic commission, §17-22-101.

Massage therapist, §17-86-102.**Massage therapy,** §17-86-102.**Massage therapy clinic,** §17-86-102.**Massage therapy instructor,**
§17-86-102.**Massage therapy school,** §17-86-102.**Master electrician.**

Occupations, §17-28-101.

Master massage therapist,

§17-86-102.

Master plumber.

Occupations, §17-38-101.

Match.

Athletic commission, §17-22-101.

Medical dosimetrist.

Medical ionizing radiation licensure,
§17-106-103.

Medical equipment, §17-92-901.**Medical gas.**

Medical equipment suppliers,
§17-92-901.

Medication assistive person.

Medication assistive nursing
programs, §17-87-701.

Medicine.

Pharmacists and pharmacies,
§17-92-101.

Member.

Accountants, §17-12-103.

Metadata.

Surveyors, §17-48-101.

DEFINED TERMS —Cont'd**Minor.**

Scrap metal dealers, §17-44-101.

Mixed martial arts.

Athletic commission, §17-22-101.

Mobile dental facility, §17-82-601.**Mold.**

Mold investigator licensing,
§17-54-102.

Mold investigator, §17-54-102.**Motor vehicle.**

Itinerant merchants, §17-49-202.

NASBA.

Accountants, §17-12-103.

NBFFA.

Private investigators and private
security agencies, §17-40-102.

NICET.

Private investigators and private
security agencies, §17-40-102.

Noncommercial applicator.

Pest control services, §17-37-102.

Noncommunity public water system.

Waterworks operators, §17-51-101.

Nonferrous metal.

Scrap metal dealers, §17-44-101.

**Nontransient noncommunity public
water system.**

Waterworks operators, §17-51-101.

Nuclear medicine technologist.

Medical ionizing radiation licensure,
§17-106-103.

Nursing facilities.

Prescription drug redispensing
program, §17-92-1102.

Nutrition care services.

Dietitians, §17-83-103.

Nutrition counseling.

Dietitians, §17-83-103.

Occupational therapist.

Occupations, §17-88-102.

Occupational therapy.

Occupational therapists, §17-88-102.

Occupational therapy aide.

Occupations, §17-88-102.

Occupational therapy assistant.

Occupations, §17-88-102.

One ton.

HVAC, §17-33-101.

Operator.

Beauty pageants, §17-21-101.
Mobile dental facilities, §17-82-601.

Ophthalmic dispensing.

Optometrists, §17-89-102.

Optometrist.

Pharmacists and pharmacies,
§17-92-101.

DEFINED TERMS —Cont'd**Order.**

Medical equipment suppliers,
§17-92-901.

Orthosis, §17-107-103.

Orthotic assistant, §17-107-103.

Orthotic education program,
§17-107-103.

Orthotic/prothetic assistant,
§17-107-103.

Orthotic resident, §17-107-103.

Orthotics, §17-107-103.

Orthotist, §17-107-103.

Participate in a real estate auction.

Real estate licenses, §17-42-103.

Patient.

Chronic intractable pain treatment,
§17-95-703.

Mobile dental facilities, §17-82-603.

Patient care plan.

Pharmacists and pharmacies,
§17-92-101.

PCAOB.

Accountants, §17-12-103.

Pedorthic device, §17-107-103.

Pedorthic education program,
§17-107-103.

Pedorthics, §17-107-103.

Pedorthist, §17-107-103.

Perfusion, §17-104-102.

Perfusion protocols, §17-104-102.

Perfusion, §17-104-102.

Person.

Appraisal management company
registration, §17-14-402.

Athletic agent, §17-16-102.

Athletic commission, §17-22-101.

Auctioneers, §17-17-103.

Home inspectors registration act,
§17-52-303.

HVAC, §17-33-101.

Internet prescription consumer
protection act, §17-92-1003.

Itinerant merchants, §17-49-202.

Occupational therapists, §17-88-102.

Opticians, §17-89-102.

Pest control services, §17-37-102.

Polygraph examiners, §17-39-102.

Precious metals buyers, §17-23-101.

Private investigators, §17-40-102.

Scrap metal dealers, §17-44-101.

Speech-language pathologists,
§17-100-103.

Transient merchants, §17-49-103.

Veterinarians, §17-101-102.

Water well constructors, §17-50-103.

Personal property.

Appraisers, §17-14-103.

DEFINED TERMS —Cont'd**Pest control service.**

Businesses, §17-37-102.

Pharmaceutically equivalent.

Pharmacists and pharmacies,
§17-92-101.

Pharmacist.

Internet prescription consumer
protection act, §17-92-1003.

Pharmacy.

Businesses, §17-92-101.

Internet prescription consumer
protection act, §17-92-1003.

Pharmacy care, §17-92-101.

Physical therapist, §17-93-102.

Physical therapist assistant,
§17-93-102.

Physical therapy, §17-93-102.

Physical therapy aide, §17-93-102.

Physician.

Chiropractors, §17-81-102.

Chronic intractable pain treatment,
§17-95-703.

Medical professions, §17-80-107.

Pharmacists and pharmacies,
§17-92-101.

Physician assistant, §17-105-101.

Physicians' health committee.

Medical professions, §17-80-203.

Pitless adapter.

Water well constructors, §17-50-103.

Plumbing.

Occupations, §17-38-101.

Podiatric medicine, §17-96-101.

Podiatrist.

Occupations, §17-96-101.

Poisons.

Pharmacists and pharmacies,
§17-92-101.

Polygraph examiner.

Occupations, §17-39-102.

Practice of advanced nurse

practitioner nursing, §17-87-102.

**Practice of advanced practice
nursing**, §17-87-102.

**Practice of alcoholism and drug
abuse counseling**, §17-27-401.

Practice of architecture.

Architects, §17-15-102.

Practice of certified nurse

anesthesia, §17-87-102.

Practice of chiropractic.

Chiropractors, §17-81-102.

**Practice of clinical nurse specialist
nursing**, §17-87-102.

**Practice of dispensing hearing
instruments**, §17-84-101.

DEFINED TERMS —Cont'd**Practice of engineering.**

Occupations, §17-30-101.

Practice of medicine.

Physicians and surgeons, §17-95-202.

Practice of nurse midwifery,
§17-87-102.**Practice of pharmacy.**Pharmacists and pharmacies,
§17-92-101.**Practice of physical therapy,**
§17-93-102.**Practice of practical nursing,**
§17-87-102.

Nurses, §17-87-102.

Practice of professional nursing.

Nurses, §17-87-102.

Practice of professional soil
classifying.

Occupations, §17-47-101.

Practice of psychiatric technician
nursing, §17-87-102.**Practice of psychology, §17-97-102.****Practice of public accounting.**

Accountants, §17-12-103.

Practice of registered nurse
practitioner nursing, §17-87-102.**Practice of social work, §17-103-103.****Practice of soil classifying.**

Soil classifiers, §17-47-101.

Practice unit.

Accountants, §17-12-507.

Practicing dentistry.

Dentists, §17-82-102.

Practitioner.Internet prescription consumer
protection act, §17-92-1003.**Prefabricated device.**Orthotics, prosthetics and pedorthics
practice act, §17-107-103.**Premises.**Internet prescription consumer
protection act, §17-92-1003.**Prescription.**Pharmacists and pharmacies,
§17-92-101.**Prescription drug.**Prescription drug redispensing
program, §17-92-1102.**Prescription-only drug.**Internet prescription consumer
protection act, §17-92-1003.**Prescription order.**Internet prescription consumer
protection act, §17-92-1003.**Primary residence.**Electrical contractors and electricians,
§17-28-101.**DEFINED TERMS —Cont'd****Primary source verification**
procedure.Credentialing information on
physicians, §17-95-107.**Principal.**

Real estate licenses, §17-42-701.

Principal broker.

Real estate licenses, §17-42-103.

Private investigator.

Occupations, §17-40-102.

Private security officer.

Occupations, §17-40-102.

Professional.

Athletic commission, §17-22-101.

Professional bail bond company,
§17-19-101.**Professional bail bondsman,**
§17-19-101.**Professional engineer.**

Occupations, §17-30-101.

Professional incompetence.Medical professions, §17-80-203.
Optometrists, §17-90-503.**Professional service.**

Accountants, §17-12-103.

Professional soil classifier.

Occupations, §17-47-101.

Professional-sports services
contract.

Athletic agent, §17-16-102.

Professional surveyor, §17-48-101.**Promoter.**

Athletic commission, §17-22-101.

Properly transferred.Prescription drug redispensing
program, §17-92-1102.**Proper physician-patient**
relationship.Internet prescription consumer
protection act, §17-92-1003.**Proper practitioner-patient**
relationship.Internet prescription consumer
protection act, §17-92-1003.**Proprietary medicines.**Pharmacists and pharmacies,
§17-92-101.**Prosthesis, §17-107-103.****Prosthetic assistant, §17-107-103.****Prosthetic education program,**
§17-107-103.**Prosthetic resident, §17-107-103.****Prosthetics, §17-107-103.****Prosthetist, §17-107-103.****Provisional licensed perfusionist.**

Perfusion, §17-104-102.

DEFINED TERMS —Cont'd**Provisionally licensed dietitian.**

Occupations, §17-83-103.

Psychological examiner.

Occupations, §17-97-102.

Psychologically impacted.

Residential real estate, §17-10-101.

Psychologist.

Occupations, §17-97-102.

Public entity.

HVAC, §17-33-101.

Public practice of geology.

Geologist, §17-32-102.

Public water system.

Waterworks operators, §17-51-101.

Pumping equipment.

Water well constructors, §17-50-103.

Water well rig confiscation act,
§17-50-403.**Pump installer.**

Water well constructors, §17-50-103.

Qualified geologist.

Occupations, §17-32-102.

Qualified medical director.Respiratory care practitioners,
§17-99-102.**Qualified operator.**

Pest control services, §17-37-102.

Radiation health/medical physicist.Medical ionizing radiation licensure,
§17-106-103.**Radiation practitioner.**Medical ionizing radiation licensure,
§17-106-103.**Radiation therapist.**Medical ionizing radiation licensure,
§17-106-103.**Radiologic technologist.**Medical ionizing radiation licensure,
§17-106-103.**Radiologic technology.**Medical ionizing radiation licensure,
§17-106-103.**Real estate.**

Appraisers, §17-14-103.

Broker licenses, §17-42-103.

Real estate appraisal.

Appraisers, §17-14-103.

Real estate fee appraiser.

Appraisers, §17-14-103.

Real estate related financial transaction.

Appraisers, §17-14-103.

Real property.

Appraisers, §17-14-103.

Reasonable cause for payment.

Real estate licenses, §17-42-701.

DEFINED TERMS —Cont'd**Record.**

Athletic agent, §17-16-102.

Scrap metal dealers, §17-44-101.

Referral activities.

Counselors, §17-27-102.

Referral fee.

Real estate licenses, §17-42-701.

Refrigeration.

HVAC, §17-33-101.

Registered abstracter.

Professions, §17-11-102.

Registered architect.

Professions, §17-15-102.

Registered certified specialty geologist.

Occupations, §17-32-102.

Registered clinical supervisor.Alcoholism and drug abuse counselors,
§17-27-401.**Registered dietitian.**

Occupations, §17-83-103.

Registered disease intervention specialist.

Occupations, §17-98-103.

Registered dispensing optician.

Occupations, §17-89-102.

Registered forester.

Occupations, §17-31-102.

Registered geologist.

Occupations, §17-32-102.

Registered interior designer.

Occupations, §17-35-103.

Registered residential interior designer.

Occupations, §17-35-603.

Registered sanitarian.

Occupations, §17-43-101.

Registrant.Appraisal management company
registration, §17-14-402.

HVAC, §17-33-101.

Private investigators, §17-40-102.

Registration.

Architects, §17-15-102.

Athletic agent, §17-16-102.

Private investigators, §17-40-102.

Rehabilitation and rehabilitation services.Impaired pharmacist program,
§17-92-701.**Repair.**

HVAC, §17-33-101.

Water well constructors, §17-50-103.

Report.

Appraisers, §17-14-103.

Representation agreement.

Real estate licenses, §17-42-701.

DEFINED TERMS —Cont'd**Research activities.**

Counselors, §17-27-102.

Residential building contractor,

§17-25-502.

Residential journeyman electrician,

§17-28-101.

Residential master electrician,

§17-28-101.

Residential unit.

Home inspectors registration act,

§17-52-303.

Respiratory care.

Respiratory care practitioners,

§17-99-102.

Respiratory care practitioner.

Occupations, §17-99-102.

Responsible charge.

Engineers, §17-30-101.

Responsible charge of work.

Geologists, §17-32-102.

Restricted plumber.

Occupations, §17-38-101.

Review.

Appraisers, §17-14-103.

Rig.

Water well constructors, §17-50-103.

Water well rig confiscation act,

§17-50-403.

Sale.

Itinerant merchants, §17-49-202.

Salesperson.

Real estate licenses, §17-42-103.

Sanctioned recreational sports activities.

Athletic trainers, §17-93-402.

Sanitarian-in-training.

Occupations, §17-43-101.

Scrap metal.

Scrap metal dealers, §17-44-101.

Scrap metal processor.

Scrap metal dealers, §17-44-102.

Scrap metal recycler.

Scrap metal dealers, §17-44-101.

Security department of a private business.

Security agencies, §17-40-102.

Security officer commission.

Security agencies, §17-40-102.

Security services contractor.

Occupations, §17-40-102.

Seller.

Scrap metal dealers, §17-44-101.

Shareholder.

Accountants, §17-12-103.

Side-by-side operation.

Opticians, §17-89-309.

DEFINED TERMS —Cont'd**Silver.**

Precious metals buyers, §17-23-101.

Single family residence.

Residential building contractors
committee, §17-25-502.

Single station alarm system company,

§17-40-102.

Soil.

Soil classifiers, §17-47-101.

Soil classifier.

Occupations, §17-47-101.

Soil classifier-in-training.

Occupations, §17-47-101.

Soil pretreatment.

Pest control services, §17-37-102.

Solicitor.

Pest control services, §17-37-102.

Specialist sign electrician.

Electrical contractors and electricians,
§17-28-101.

Speech-language pathologist.

Occupations, §17-100-103.

Speech-language pathology.

Occupations, §17-100-103.

Speech-language pathology support personnel,

§17-100-103.

Spinal manipulation.

Chiropractors, §17-81-102.

Sponsor.

Hearing instrument dispensers,
§17-84-101.

State.

Accountants, §17-12-103.

Athletic agent, §17-16-102.

State-certified appraiser,

§17-14-103.

State certified residential appraiser.

Occupations, §17-14-103.

State-licensed appraiser,

§17-14-103.

Student.

Cosmetology, §17-26-102.

Student-athlete.

Athletic agent, §17-16-102.

Subcontractor.

HVAC, §17-33-101.

Subordinate.

Geologists, §17-32-102.

Supervise.

Pest control services, §17-37-102.

Supervised work experience.

Alcoholism and drug abuse counselors,
§17-27-401.

Supervising physician.

Physician assistant, §17-105-101.

Supervision.

Medication assistive nursing
programs, §17-87-701.

DEFINED TERMS —Cont'd**Supervision —Cont'd**

Pharmacists and pharmacies,
§17-92-101.

Physical therapists, §17-93-102.

Physician assistant, §17-105-101.

Supervisor of technicians.

Private investigators and private
security agencies, §17-40-102.

**Surveying measurement
certification.**

Surveyors, §17-48-101.

Surveyor.

Occupations, §17-48-302.

Technical submissions.

Architects, §17-15-102.

Telecommunications.

Physical therapists, §17-93-102.

Temporary license.

Medical ionizing radiation licensure,
§17-106-103.

Physicians and surgeons, §17-95-502.

Temporary or transient business.

Transient merchants, §17-49-103.

Termite and other structural pests.

Pest control services, §17-37-102.

Termite infestation.

Pest control services, §17-37-102.

The practice of dental hygiene.

Dental hygienists, §17-82-102.

The practice of optometry.

Optometrists, §17-90-101.

**The practice of professional
forestry.**

Occupations, §17-31-102.

Therapeutically equivalent.

Pharmacists and pharmacies,
§17-92-101.

Transferee.

Psychologically impacted property,
§17-10-101.

Transient merchant.

Occupations, §17-49-103.

Treatment.

Waterworks operators, §17-51-101.

Treatment program.

Medical professions, §17-80-203.

Optometrists, §17-90-503.

Undercover agent.

Private investigators, §17-40-102.

Unethical conduct.

Hearing instrument dispensers,
§17-84-101.

**Uniform standards of professional
appraisal practice.**

Appraisers, §17-14-103.

Validation examination.

Nurses, §17-87-402.

DEFINED TERMS —Cont'd**Ventilation.**

HVAC, §17-33-101.

Verification.

Impaired pharmacist program,
§17-92-701.

Veterinarian.

Pharmacists and pharmacies,
§17-92-101.

Professions, §17-101-102.

**Veterinarian-client-patient
relationship, §17-101-102.****Veterinary medicine.**

Professions, §17-101-102.

Veterinary premises.

Businesses, §17-101-102.

Veterinary technician.

Occupations, §17-101-102.

Voice stress analysis.

Voice analysis examiners, §17-39-301.

Voice stress analysis examiner.

Occupations, §17-39-301.

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